Vol. V

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 848

MARY W. STEWART, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 8, 1942.

CERTIORARI GRANTED FEBRUARY 16, 1942.

TRANSCRIPT OF RECORD

In Five Volumes

Supreme Court of the United States

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No. 848

MARY W. STEWART, et al.,

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vs.

UNITED STATES OF AMERICA,

Respondent.

VOLUME V

(Pages 1 to 174)

Exhibits

and

Proceedings

in Circuit Court of Appeals

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

No. 9507

United States

Circuit Court of Appeals

For the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

MARY W. STEWART, et al.,

Appellees.

Transcript of Record

In Five Volumes

Volume V

(Pages 1 to 174)

Exhibits

and

Proceedings

in Circuit Court of Appeals

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States Circuit Court of Appeals for the Ninth Circuit.

No. 7522

James E. O'Donnell, et al.,

Appellants,

vs.

United States of America,

Appellee.

CERTIFIED COPY OF TRANSCRIPT IN CAUSE NO. 311, N. D. IN DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

Volume I.

TRANSCRIPT OF THE PROCEEDINGS

In Case

No. 307

G. W. P. BISSEL and
WILLIAM H. ASPINWALL,

Claimants,

vs.

THE UNITED STATES,

Defendant,

For the Place Named
"YSLA de YEGUA" or "MARE ISLAND"

Office of the Board of Commissioners,
To ascertain and settle the Private Land Claims
In the State of California.

Be It Remembered, that on this thirty first day of August, Anno Domini One Thousand Eight Hundred and Fifty-two, before the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a Board in the City of San Francisco, in the State aforesaid, in the United States of America, the following Proceedings were had, to wit;

The Petition of G. W. P. Bissel & William H. Aspinwall, for the Place named "Ysla de Yegua" or "Mare Island", was presented, and ordered to be filed and docketed with No. 307 and is as follows, to wit;

(Vide page 3 of this Transcript.)

Upon which Petition the following subsequent Proceedings were had in their chronological order, to wit;

San Francisco, April 20, 1854.

In Case No. 307, G. W. P. Bissell et al: for the "Ysla de Yegua", the deposition of Stephen Cooper, a witness in behalf of the United States, taken before Commissioner Peter Lott, was filed;

(Vide page 5 of this Transcript.)

San Francisco, September 26, 1854.

Case No. 307 was ordered to be placed at the foot of the 2d class cases on the Trial Docket.

San Francisco, October 12, 1854.

In the same case the deposition of Juan B. Alvarado, a witness in behalf of the Claimants, taken before Commissioner Peter Lott, was filed;

(Vide page 9 of this Transcript.)

San Francisco, October 19, 1854.

In the same case the deposition of Mariano G. Vallejo, a witness in behalf of the Claimants, taken before Commissioner Alpheus Felch, was filed;

(Vide page 19 of this Transcript.)

San Francisco, Oct. 20, 1854.

In the same case the deposition of Juan José Castro, a witness in behalf of the Claimants, taken before Commissioner Peter Lott, was filed;

(Vide page 21 of this Transcript.)

San Francisco November 1, 1854.

In the same case the deposition of William McDaniel, a witness in behalf of the United States, taken before Commissioner R. Aug. Thompson, was filed;

(Vide page 25 of this Transcript.)

San Francisco, November 6, 1854.

In the same case the deposition of L. B. Meizner, a witness in behalf of the United States, taken before Commissioner S. B. Farwell, was filed;

(Vide page 27 of this Transcript.)

San Francisco, November 7, 1854.

Case No. 307 was submitted on briefs and taken under advisement by the Board.

San Francisco, May 8, 1855.

In the same case Commissioner S. B. Farwell delivered the opinion of the Board confirming the claim;

(Vide page 65 of this Transcript.)

and the following order was made towit:

(Vide page 69 of this Transcript.)

PETITION.

To the Honorable Commissioners to Settle Private Land Claims in California.

The petitioners George W. Bissell and William H. Aspinwall respectfully show.

That on the 31st day of October A. D. 1840 Manuel Jimeno Casarin Governor ad interim of California made a provisional grant to Victor Castro of the Island called "Isla de la Yegua" in the present County of Sonoma.

That on the 20th day of May A. D. 1841, Juan B. Alvarado Gov of California by virtue of authority of law in him vested granted to the said Victor Castro in fee the said tract of Land Mare Island a copy of which grants are herewith submitted marked "A". with a translation marked "B".

That on the 28th day of May A. D. 1850 the said Victor Castro sold and conveyed the said tract of land to said John B. Frisbee and Bezer Simmons of the firm of S. H. & Co. a copy of which conveyance is submitted herewith marked "C".

That on the 3d day of September A. D. 1850 the said Bezer Simmons and the said Simmons Hutch-

inson & Co. by Deeds of Assignment conveyed his interest in the said tract of land to F. Billings, I. R. Bolton and H. W. Halleck a copy of which Deeds of Assignment is submitted herewith marked "D".

That on the 15th day of August A. D. 1850 the said John B. Frisbee sold and conveyed a part of his interest in said tract of land to the petitioner William H. Aspinwall, a copy of the record of which conveyance is submitted herewith marked "E".

That on the 16th day of July A. D. 1852 the said John B. Frisbee sold and conveyed his remaining interest in said island to the petitioner G. W. P. Bessell a copy of which conveyance is submitted herewith marked "F".

That on the 1st day of July A. D. 1852 the said Billings, Bolton and Halleck sold and conveyed to the petitioner G. W. P. Bissell the interest of said Bezer Simmons and Simmons Hutchinson and Company in the aforesaid tract of land a copy of which conveyance is submitted herewith marked "G".

That on the 25th day of May A. D. 1850 the said Simmons and Frisbee sold and conveyed to Victor Castro one undivided tenth part of said island as shown by the original conveyance a copy of which conveyance is submitted herewith marked "H".

That on the 20th day of July A. D. 1852 the said Castro sold and conveyed the said one undivided tenth part of said island to the petitioner G. W.

P. Bissell a copy of which conveyance is submitted herewith marked "I".

And the petitioners further show that the said tract of land has not been surveyed by the Surveyor General of the United States such survey not being necessary, the land being an island and its boundaries easily defined; that moreover the petitioners and those under whom they hold have been for 12 years and now are in the quiet and undisputed possession and occupation of said island.

That they know of no conflicting claim. That they rely for confirmation of title upon the original papers, copies of which are submitted herewith upon the records and minutes in the archives now in charge of the Surveyor General and upon such other and further proofs as they may be advised are necessary.

Wherefore they pray the Commissioners to confirm to them the aforesaid tract of land.

By their Attys.

HALLECK, PEACHY &
BILLINGS

Filed in office Aug. 31, 1852.

(Signed) GEO. FISHER

Secy.

DEPOSITION OF S. COOPER

United States of America,
State of California.—ss.

San Francisco, April 20, 1854.

This day personally came before Peter Lott a Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State Stephen Cooper a witness on behalf of the United States in Case No. 307 on the docket of said Board wherein G. W. Bissell and William H. Aspinwall are claimants. And the said witness being duly sworn on oath deposed in the English language as follows, to wit:

The Claimants Attorney is present.

1st Question.

What is your name, age and present residence?

Ans. My name is Stephen Cooper. My age is 57 years. My residence Solano County California.

2d Question.

Are you acquainted with Isla de la Yegua (Mare Island). If yea state where it is, how far you reside from it and how long you have known it?

Ans. I am acquainted with the island mentioned. It is situated in San Pablo Bay just below the Straits of Carquinas about 6 miles from Benicia. I was some 11 miles from it. I have known the island ever since the fall or early winter of 1847.

3d Question.

Look at the paper now shown you marked Exhibit No. 1 to the Deposition of Stephen Cooper, P. L. and say whether you have ever seen it before. If

yea, state where, when and under what circumstances?

Answer.

I believe I have seen the paper before. I would not sware to a bit of paper. I have seen a similar paper.

I do not remember the time precisely when I saw the paper, but it was some time in 1850, at Benicia. It was shown to me by Capt. Frisbee who claimed to have a title to the island from Victor Castro. Frisbee showed me the paper to proove his title to the island, because he understood I was backing some young men who were occupying the island against his wishes and I had told him if he had a good title he should have no trouble with the young men.

His object was to get the young men off and get the possession himself. Lancing B. Misner acted as interpretor for me when the paper was produced on that occasion. I called Capt. Frisbee's attention to the writing on the 2d page of the document and told him—

It is strange this writing appears here now, and it was not here in the winter of 1847 & 1848. He asked me if I thought that he forged it. I replied I did not, but I thought somebody had.

4th Question.

Did you ever get Mr. Misner to act as interpretor or translator of any document relating to Mare Island more than once?

Answer.

Never except the one time.

5th Question.

State why you informed Capt. Frisbee that the grant had been written on the paper after the year 1848?

Answer.

I am not able to say whether I judged from my having seen the paper and noticed the difference by ocular inspection or whether it was heresay which directed my attention to that point, and induced me to speak of him of it as I did. I had in the winter of 1847 and 1848 sent to Monteray to have the archives searched as Castro said he had a title then. I then thought of purchasing but I learned in some way that there was no sufficient title and gave up all idea of buying whether I saw the paper or not. I do not recollect.

I may have been informed of its character through Dr. Simple who went to Monteray for me or through others.

Claimants Counsel objects to the proofs respecting the archives as illegal.

Cross Examined by Claimants Counsel

1st Question.

What time in 1847 was it that you were negotiating or talking of a purchase of the island, and with whom?

Answer.

I cannot say nearer than that it was in the winter of 1847 or 1848. It was rainy weather. It was with

Victor Castro, Doct. Simple and myself. The Dr. had learned some Spanish and did the talking.

2d Question.

When you were having this conversation, were the papers exhibited to you?

Answer.

I do not think they were. Dr. Simple went to Castro house with him to see his papers.

3d Question.

When was the time then that you saw the papers which has been exhibited to you here?

Answer.

The time was in the spring of 1850 or about that time when Capt. Frisbee showed it to me as I before stated.

STEPHEN COOPER

Subscribed and sworn to before me on this 20th day of April A. D. 1854.

PETER LOTT

Commissioner for taking testimony &c.

Filed in office Aug. 20, 1854.

(Signed) GEO FISHER

Secy.

DEPOSITION OF JUAN B. ALVARADO.

United States of America,
State of California—ss.

San Francisco, Oct. 10, 1854.

This day came before Peter Lott, Commissioner taking testimony to be used before the Board of

U. S. Land Commissioners in said State, Juan B. Alvarado a witness on behalf of the claimants G. W. P. Bissell and William H. Aspinwall in Case No. 307 on the docket of said Board and said witness being sworn deposed in Spanish which is interpreted by the interpreter to said Board as follows.

The U. S. Law Agent is present.

Questions by Capt. Halleck, Attorney for claimant.

1st Question:

What is your name, age and residence?

Answer:

My name is Juan B. Alvarado. My age 43 years, and residence, Contra Costa County, California.

2d Question:

Are you acquainted with the place called Mare Island. If yea, where is it?

Answer:

I am acquainted with it. It *it* is in the Bay of San Francisco near the Straits of Carquinas.

3d Question:

Did you ever as Governor of California make a grant of said Island to any one. If yea, to whom?

Answer:

I did as Governor, grant it to Victor Castro.

4th Question:

Look at the document, now shown to you, marked Exhibit 1 to deposition of S. Cooper. P. L. and also exhibited in this deposition and heretofore filed in this case and state if you know the handwriting and signatures to said document if yea. State your

means of knowledge and also whether they are genuine?

Answer:

I know the handwriting of Manuel Jimeno and Jose Z. Fernandez. I have seen them both write and their signatures as they here appear are genuine and this is also my own proper signature which I signed here at the time the paper was dated.

The body of said document on the first page is written by said Jose Z. Fernandez and the body of the second page is in my own hand writing.

5th Question:

State what you know of the occupation of said Island by said Victor Castro?

Answer:

In the year 1844 as I passed by the Island I saw horses on it belonging to said Castro and Castro and I took horses from the Island and crossed over and went to Sonoma. I understood and was well satisfied said Castro occupied said Island before he obtained said grant.

6th Question:

Is the place called by this name an Island surrounded by water?

Answer:

I think it is an Island.

Cross Examined by U. S. Law Agent.

1st Question:

Do you know where the Bay of San Pablo is?

Answer:

I think I do. It is a part of the Bay of San Francisco.

2d Question:

Is Mare Island in the Bay of San Pablo?

Answer:

No.

3d Question:

Are you acquainted with Mr. Frisbee's son-in-law, Genl. Vallejo?

Answer:

Yes. I am.

4th Question:

Have you ever had any conversation with him about this Mare Island?

Answer:

I do not remember ever to have had any conversation with him on this subject.

5th Question:

Have you a distinct recollection of having signed the document which has been exhibited to you in this case?

Answer:

I do not remember the act of signing it, though I know it is my signature and that I did sign it I have no doubt.

6th Question:

Where were you when you signed it?

Answer:

I ought to have been at the place where the paper is dated. I ought to be in Monterey.

7th Question:

Do you recollect positively where you were when you signed said document?

Answer:

I recollect what I have already answered.

8th Question:

Do you decline to give a direct answer about your recollection?

Answer:

I do not.

9th Question:

Then answer the question directly whether you remember where you were when you signed it?

Answer:

I would say independent of the document as a means of refreshing my memory that I was at Monterey.

10th Question:

In what house at Monterey were you?

Answer:

I do not remember.

11th Question:

Do you know independent of the wording of the instrument, that you signed it in Monterey?

Answer:

I do know that I did sign it in Monterey, independent of the wording of the document.

12th Question:

By what circumstances do you recollect it?

Answer:

Because I was Governor and I was at the head of the Department at the seat of Government at that time.

13th Question:

Who was Secretary at that time?

Answer:

I think Jimeno was.

14th Question:

Who petitioned for the grant in this case?

Answer:

I do not remember.

15th Question:

Was there any record of said grant kept in the archives?

Answer:

I do not remember.

16th Question:

Was it usual to keep a record of such grants?

Answer:

There was a book in which an entry was made of such grants generally though the Secretary might forget it.

17th Question:

How many grants did you ever make and write them out yourself?

Answer:

I cannot remember how many.

18th Question:

Did you ever write any besides this?

Answer:

I think I have.

19th Question:

What one?

Answer:

I cannot recollect now any particular one.

20th Question:

Why did you write this grant?

Answer:

I did it because I choose to do it and had the authority to do it.

21st Question:

In whose presence did you write?

Answer:

I do not remember.

22d Question:

Do you recollect having written it?

Answer:

I do not remember the act of writing it.

23d Question:

How long after you signed the Yerba Buena Island grant did you sign this grant?

Answer:

I do not remember.

24th Question:

How long before you signed it was it that you saw the horses on the Island?

Answer:

I never saw any horses there before I signed the title.

25th Question:

Why did not Jimeno sign this grant as Secretary?

Answer:

It might have happened that I did not order him to do it, or that he forgot it.

26th Question:

From whom did you receave this document when you wrote and signed the grant?

Answer:

I do not now remember from whom I receaved it.

27th Question:

How long was it in your possession before you wrote the grant in it?

Answer:

I do not recollect.

28th Question:

Had the paper been filed before you wrote the grant?

Answer:

I do not remember whether it had.

29th Question:

Had it ever been in the hands of the interested party before you wrote the grant on it?

Answer:

I do not recollect now, tho it is probable it had been.

30th Question:

Had you ever seen it before the time when you wrote the grant?

Answer:

I do not remember to have seen it before that occasion.

31st Question:

Had you ever heard of it before?

Answer:

Yes I had. I believe that Jimeno told me at Monteray about the time I made the grant that he had given the provisional grant to the Land.

32d Question:

Was it before or after you made the grant?

Answer:

I believe he told me before.

33d Question:

How long before?

Answer:

I do not remember.

34th Question:

Where were you when he told it to you?

Answer:

I think I was in Monterey. I cannot remember the exact house or spot.

35th Question:

What led to the conversation?

Answer:

I do not remember.

36th Question:

What did he tell you?

Answer:

I do not remember.

37th Question:

Had you ever been at Mare Island before you made the grant?

Answer:

I had not.

38th Question:

When did you first know it by that name?

Answer:

I have heard it called by that name for a long time. I do not know how long, but I heard it before I made the grant.

39th Question:

From whom did you hear it?

Answer:

I cannot remember any particular person. It was publicly called and known by that name. I recollect Jimeno told me of the grant by him and spoke of it by that name.

40th Question:

What did you know of said Island before you made the grant?

Answer:

I had never seen it or had any personal knowledge of it before that. I had heard that Victor Castro either had put on or was about putting horses on the said Island and occupying it.

41st Question:

Had you heard anything else about it?

Answer:

I do not remember to have heard anything else.

42d Question:

How many grants did you make of land while you were Governor where you had no knowledge either by report or otherwise of the land?

Answer:

I do not remember.

43d Question:

Did you ever make any without such knowledge?

Answer:

Yes. Various ones.

44th Question:

Name some of them.

Answer:

I do not remember any besides the grant in question.

45th Question:

Was it not your constant practice when you were ignorent of the land applied for to refer it to some local authority for report or information before you made the grant?

Answer:

It was not: I required such information in some cases, and not in others as it suited my views at the time.

46th Question:

Without information on the subject how could you tell what to grant?

Answer:

I knew or understood in some manner sufficient to decide upon the business of my Government at that time.

47th Question:

In what manner did you know enough in this case for the purpose of granting the Island in question?

Answer:

I got information from Jimeno of the business before I made the grant. I do not now remember what he told me.

48th Question:

How did you know Castro wanted the grant?

Answer:

Probably Jimeno told me so.

49th Question:

State all that Jimeno had to do with making the grant or giving information in the case?

Answer:

I cannot now recollect the particulars of this matter, but it is most likely that Jimeno had some proceedings in the business and informed me of it, and that I therefore went on and made the grant out. I cannot be posative as to the exactness of what did transpire.

50th Question:

Why did you not as was your usual custom first make a decree annexed to the Expedient and then make the grant on a separate piece of paper?

Answer:

Because I was sufficiently well satisfied with what I did.

JUAN B. ALVARADO.

Subscribed and sworn to before me on this 10th day of October A. D. 1854.

PETER LOTT,
Commissioner.

Filed in office Oct. 12, 1854.
(Signed) GEO. FISHER,
Secy.

DEPOSITION OF M. G. VALLEJO.

United States Land Commission.

San Francisco, Oct. 19, 1854.

On this day before Commissioner Alpheus Felch came Mariano G. Vallejo a witness on behalf of the claimants G. W. P. Bissell et al. Case No. 307 who after being duly sworn deposed as follows:

Questions by Capt. Halleck attorney for claimants.

1st Question:

Please state your name, age, and place of residence?

Answer:

My name is Mariano G. Vallejo. My age 47 years and I reside at Sonoma in California.

2d Question:

Do you know the place called Mare Island. If yea, where is it situated?

Answer:

I do know it. It is an Island in San Pablo Bay at the mouth of Napa Creek. The Island is some two and ~~a half~~ miles in length. It is irregular in its

width and contains about a half a league of land, a little more or less.

3d Question:

State what you know of the occupation of the Island?

Answer:

I was occupied by Victor Castro a long time ago by putting his horses on it. He commenced putting them there in 1839 or 1840 according to my best recollection and continued to keep them there until 1850. He had a little correl there. The horses were seventy or eighty in number.

4th Question:

Did you ever see the title papers of said Island. If yea, when?

Answer:

I saw them some twelve years ago.

5th Question:

Please look on the paper now here presented to you being marked "Exhibit 1 to Depo. of S. Cooper P. L." heretofore filed in this case and also marked as filed on the tenth day of Sept. 1853 and state whether this is the title paper alluded to in the last question and answer?

Answer:

It is the same.

M. G. VALLEJO.

Mr. McKum, Law Agent, attended at the taking of this deposition but propounded no questions to the witness.

Subscribed and sworn to before me this 19th day of October, A. D. 1854.

ALPHEUS FELCH,
Commissioner.

Filed in office Oct. 19th, 1854.

(Signed) Geo. Fisher, Secy.

DEPOSITION OF JUAN JOSE CASTRO.

United States of America,
State of California.—ss.

San Franeisco Oct. 19, 1854.

This day came before Peter Lott a Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State, Juan Jose Castro a witness on behalf of the claimants G. W. P. Bissell, and William H. Aspinwall in case No. 307 on the docket of said Board, and said witness being duly sworn deposed in Spanish which is interpreted by the interpreter to said Board as follows:

The U. S. Law Agent is present.

Questions by Judge Sutherland for Claimants.

1st Question.

What is your name, age & place of residence?

Answer.

My name is Juan Jose Castro. My age 52 years. My residence Contra Costa County, California.

2d Question.

Do you know the place called Mare Island. If yea, state what you know of its occupation?

Answer.

I do know the said Island. Victor Castro occupied it in the year 1840 by putting mares and horses on it, and he built a hut there for the Indians in charge of said stock and a corral for the stock. I assisted in putting said mares and horses on the Island.

Cross Examined by U. S. Law Agent.

1st Question.

How many Islands did Gov. Alvarado ever grant to you?

Answer.

Only one, the Island of Yerba Buena.

2d Question.

Are you a brother to Victor Castro the grantee in this case?

Answer.

I am.

3d Question.

How many mares and horses were put on the Island at the time you have mentioned?

Answer.

About 50 head.

4th Question.

Was that before or after the grant was made?

Answer.

It was after the grant in the same year.

5th Question.

Where did you take animals from?

Answer.

From San Pablo.

6th Question.

Which Island was granted first Yerba Buena or Mare Island?

Answer.

The Island of Yerba Buena was first granted.

7th Question.

How do you know?

Answer.

Because it was granted to me.

8th Question.

Were both grants made at the same place?

Answer.

I came here to give testimony concerning Mare Island and when that is done you can ask concerning the other.

9th Question.

How did you take the mares from San Pablo to Mare Island and who was with you?

Answer.

We drove them to the Straits and then took them over in boats to the Island. There were some Mexican and Indian servants with me. 3 Mexicans and 4 or 5 Indians.

The Mexicans were Manuel Andres, Mariano and Olvera, and I do not know the names of the Indians. Victor Castro was along with us.

10th Question.

How long were you taking the mares to the Island?

Answer.

We were 3 or 4 hours going from San Pablo to the Straits, and we were 2 days putting them on the Island.

11th Question.

How long did you all ~~stay on the~~ Island after you got the stock all over?

Answer.

Victor and myself went away after it was all done and we left the Indians there to take care of the stock.

12th Question.

What time in 1840 was this done.

Answer.

I do not remember what month it was, though I think it was in October or November. The rainy season had commenced.

13th Question.

When were you next at the Island and how long?

Answer.

I was there in the following year in June. We were there but a short time. We just went there to get some horses to ride.

14th Question.

Who went with you?

Answer.

Victor Castro the grantee in this case.

15th Question.

When were you next there?

Answer.

I have not been there since.

16th Question.

To what place did you ride the horses you took from the Island in 1841 and how long did you stay?

Answer.

We went to Sascal to land the horses there. We were there 3 or 4 days.

17th Question.

Where did you go then?

Answer.

We went and left the horses on the Island, and then we went to San Pablo.

18th Question.

On what part of the Island was the corral built?

Answer.

It was on the left hand side of the Island as you enter the Straits going to Napa.

19th Question.

How many tame horses were there among those on the Island?

Answer.

Some 10 or 12.

Re-examined by Claimants Counsel

1st Question.

When you say that the horses were placed on the Island after the grant, state what grant you mean?

Answer.

I mean the first provisional concession by Jimeno.

Juan Jose Castro.

Subscribed and sworn to before me on this 19th day of October A. D. 1854.

Peter Lott Comr. & C.

Filed in office Oct. 20th, 1854.

(Signed) Geo. Fisher, Secy.

DEPOSITION OF WILLIAM McDANIEL.

United States Land Commission

San Francisco, Nov. 1, 1854.

On this day before Commissioner R. Aug. Thompson came William McDaniel a witness on behalf of the United States in Case No. 307 in which case G. W. P. Bissell et al, are claimants who after being duly sworn deposed as follows:

Present U. S. Law Agent & Mr. Halleck for claimants.

Witness states that his name is William McDaniel, his age fifty four years and residence Solano County California.

Question by Law Agent.

Are you acquainted with the place called Mare Island. If yea, state what you know in relation to the grant of said Island and of the document filed in this case as evidence of title marked Exhibit 1 to Depo. of S. Cooper P. L.

Answer.

I can only state that in the spring of 1850 Stephen Cooper showed me a paper purporting to be a permit to one Castro to pasture mares and colts on the

Island. Said document was I think in the Spanish language and was translated to me by Mr. Misner, or it might have been a written translation of the document.

Mr. Cooper presented said paper to me in order to obtain my opinion as to whether it was suffieient to prevent his taking a preemption on said Island.

In reply I informed him that I did not think it offered any obsticle to such preemption.

Some time afterwards in the spring or early in the summer said Cooper informed me that Mr. Frisbee had brought the same paper back with a grant upon the back of it and prohibited him from selling in or occupying said Island.

I did not see the paper at that time. Nor am I able to state that the document referred to in the question is the same paper.

(The latter clause of this answer objected to by claimants Atty. on the ground that it is hearsay)

WILLIAM McDANIEL

Subscribed and sworn to before me Nov. 1st, 1854.

R. AUG THOMPSON,
Comr.

Filed in office Nov. 1st, 1854.

(Signed) GEO. FISHER,
Secy.

DEPOSITION OF L. B. MIZNER

San Francisco Nov. 4th 1854.

On this day before Commissioner S. B. Farwell personally came L. B. Mizner a witness on behalf of the Government in case No. 307 and after being duly sworn deposed as follows:

1st Question.

What is your name, age and place of residence?

Answer.

My name is L. B. Mizner, age twenty seven years, residence Benicia.

2d Question.

Are you acquainted with the original grant from Gov. Jimeno and Juan B. Alvarado to Victor Castro marked Exhibit 1 attached to the deposition of S. Cooper—if yea state all you know in regard thereto?

Answer.

I saw the paper in the year 1850 and interpreted the same to Major Stephen Cooper. So much as is on the first page which purports a permit to pasture horses on the Island. As to what is contained on the back I had no recollection whether it was there or not which purports to be a grant from Gov. Alvarado.

3d Question.

What is your impression as to the second grant being on the paper at the time you examined the same?

Answer.

My impressions are that the second grant was not

on the paper at the time I examined the paper, but don't know whether I got the impressions from the inspection of the paper at the time or from what has since been said to me in reference to the matter by Dr. Simple and Major Cooper. Dr. Simple is now dead.

Questions by Claimants Counsel.

1st Question.

What time in the year 1850 was it that you saw the paper?

Answer.

I am not able to state, don't know that I could say within twelve months of the time.

2d Question.

What means have you of knowing this to be the same paper that was shown you at the time?

Answer.

Nothing only from my recollection of its appearance and contents. I do not know the handwriting in which it is written.

L. B. MIZNER

Sworn to and subscribed before me on 4th Nov. A. D. 1854.

S. B. FARWELL,
Comr.

Filed in office Nov. 4th, 1854.

GEO FISHER, Secy.

Sello tercero dos Reales. 11

Habilitado provisionalmente por la Aduana Marítima del puerto de Monterey, en el Departamento de las Californias, para los años de mil ochocientos treinta y mil ochocientos treinta y uno.

Alvarado.

Monterey Dbre 30. de 1830.

Pase este instancia al Sr Juez de 1ra de Sustitucion de la Capital para que informe sobre lo que expone.

Castro.

Antonio Maria Osio.

Sr Juez del 1er distrito.

José Victor Castro vecino y labrador de este departamento ante U. con el debido respeto digo: que hallandome sin fondos para subsistir y mantener a mi familia, y no teniendo otro arbitrio para conseguirlo, que el de solicitar de la piedad de U. se sirva mandar se me entregue de los bienes que existen en la testamentaria de mi finado padre Don Victor Castro, la cantidad de quinientos pesos, que es la que necesito para mi subsistencia, y la de mi familia, en el concepto de que me comprometo a satisfacerla luego que pueda hacerlo, sin perjuicio de tercero, y en caso necesario doy mi fianza de responder de dicha cantidad, en forma. Por tanto a U. pido y suplico se sirva mandar como pido, en virtud de ser justicia que espero merecer de U.

Monterey Dbre 30. de 1830.

José Victor Castro.

Juzgado 1er Distrito.

Visto lo expuesto en esta instancia y el informe del Juez de 1ra de la Capital, y todo lo demas que

que se tuvo presente, informe la Prefectura que directamente obtiene los requisitos legales para ser atendido y que la Isla que solicita llamada la Roguen se halla baldia y sin pretension de alguna parcion dejando lo á parecer de S. E.

San Juan 6bre 16 de 1844.

José I. Castro.

Sello 3º reno. Los años

Habilitado provisionalmente por la autoridad Marcitima del puerto de Monterey en el departamento de las Californias, para los actos de mi oficio de Secretario Escribano y receptor actuando en virtud de Real Orden

Alvarado. Antonio Maria Pico.

(Rubl) En virtud del superior decreto que antecede del Sor. Prefecto Dn. José Castro que obtiene a bien nombrarme en la habilitacion que se me da de la Isla nombrada de la gregua de los de los que esta Isla, en mas pertenesiente á la costa de S. Clemente que a la de S. Pedro y que esta la fecha se halla baldia. y guardando esto a lautoridad el que hago gasto, pudiendo ser mas en el cumplimiento de lo que se me manda.

Dios y libertad. Rancho de S. Antonio

6 de 6bre de 1844. Ygnacio Vallejo

Office of the Surveyor General of the United States for California.

John C. Hays, Surveyor General of the United States for the State of California and as such now having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican Territory or Department of Upper California, by virtue of the power vested in me by law, do hereby certify that the three preceding and hereunto annexed pages of tracing paper numbered from one to three inclusive exhibit a true and accurate copy of a document now on file and forming a part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed at the City of San Francisco this twenty ninth day of September, 1853.

JOHN C. HAYS
U. S. Surveyor Gl. California.

Filed in office Jany. 19, 1854.

GEO. FISHER,
Secy.

TRANSLATION OF EXPEDIENT.

Stamp Third. Two Reales.

Provisionally authorized by the Maritime Custom House of the Port of Monterey in the Department of the Californias for the years 1840 and 1841 Alvarado.

ANTONIO MARIA OSIO.
Senor Prefect of the 1st District.

(Custom House Stamp)

Jose Victor Castro a native of and resident in this Department before the known justification of Your Excellency as is proper and lawful presents himself and represents.

That it being well known that we generally every year receive injuries from the Indians by robberies, etc. and as I have no secure place to put my little stock, I am under the necessity of coming to the goodness of Your Excellency and as there is an adjacent Island in the Bay of San Francisco called "Mare Island" which has no owner, of asking that it may be granted to me for depositing my said stock where it will be safe from the injuries which happen from said Indians.

I know Senor that it will make me some expence to pass over to said Island my small property but I will do it and with pleasure in order to secure what little remains to me.

Wherefore I beg and pray that you will be so good as to decree in favor of the Petitioner [illegible] etc.

Monterey, October 30th, 1840.

JOSE VICTOR CASTRO.

(In the Margin)

San Juan de Castro,
October 30, 1840.

Pass this Petition to the Justice of the Peace of the Contra Costa for report of the said adjacent Island which Citizen Victor Castro asks for is vacant and if it can be granted and this being done return it for decision.

CASTRO.

In virtue of the Superior decreto which precedes of Senor Prefect Don Jose Castro which you have been so good as to send to me on the petition for the Island called "de la Yegua" I ought to say that said Island belongs rather to the Coast of San Solano than to that of San Pablo, and that to the present time it is vacant and this authority does not know as any citizen has ever pretended to it, this is what I ought to say in compliance with what is asked of me.

God and Liberty. Rancho of San Antonio, November 4th, 1840.

GRACIA PERALTA.

Most Excellent Senor Governor:

Having seen the contents of this petition and the Report of the Justice of the Peace of Contra Costa and all else presented the Prefecture reports that the petitioner possesses the legal requisits to entitle him to be attended to and that the Island asked for call "La Yegua", (Mare Island) is vacant and without any person pretending to it, leaving the matter to your Excellency's pleasure.

San Juan Bautista, Nov. 14th, 1840.

JOSE F. CASTRO.

Filed in office Jan 19, 1854.

(Signed) GEO. FISHER,
Secy.

Manuel Jimeno Catarin Gobernador Interino del Departamento de las Californias.

(Sello) Se le permite provisionalmente en cuanto se practican las diligencias de estilo á D. Victor Castro empresario para habilitar la Isla nombrada la Yegua en el estrecho de los Canquines, dejando al resultado que produzcan las citadas diligencias.

En consecuencia entregue este permiso al interesado para su resguardo.

Monterey. 31 de Octe de 1850.

Jimeno. José I. Fernandez de Gal.

Juan B. Alvarado, Gobno Constitucional, Propietario del Departamento de Californias.

Por cuanto D. Victor Castro Mexicano por nacimiento ha pretendido a este Gobierno la propiedad de la Isla nombrada la Yegua situada a las cuatro inclusive del Estrecho de Canquines con fuego convencional le concedio la licencia que contenida del S. D. Manuel Jimeno Catarin encargado interinamente de este Gobierno por virtud de que el solicitante ha repetido convenido sus instancias previniendo que la dicha Isla no perjudica a la propiedad de algun individuo, pasado su comparacion ha venido en acuerdo de este dia en declarar como declaro por el presente a D. Victor Castro dueño en propiedad de la referida Isla en toda su estension con arreglo a las facultades que me han conferidas por el Supremo Gobno Nacional.

En consecuencia entregue este al interesado para que le sirva de titulo y para su resguardo y demas fines que le convengan. Dado en Monterrey Capital del Departamento a los 29 dias del mes de Mayo de 1841.

Juan B. Alvarado.

Visto en Office. Sep 10. 1853.

Jos Victor Rey

TRANSLATION OF TITLE.

Manuel Jimeno Casarin, Governor ad interim of the Department of the Californias:

[(Seal) Civil Govt. of Upper California.]

Don Victor Castro is provisionally permitted while the usual steps are being *to* taken, to occupy with horses the Island named "La Yegu" in the Straits of Carquenez.

In consequence let this permission be delivered to the party interested for his security.

Monterey, Oct. 31, 1840.

(Signed) JIMENO.

(Signed) JOSE Z. FERNANDEZ,
Sec. ad interim

Juan B. Alvarado, regular Constitutional Governor of the Department of the Californias:

Whereas, Don Victor Castro, a Mexican by birth, has petitioned to this Government for the ownership of the Island named "La Yegu" situated in the neighborhood of the Straits of Carquinez in consequence of which the foregoing permission was granted him by Senor Don Manuel Jimeno Casarin, for the time being, in charge of this Government, and in virtue of which the petitioner has repeated again his petition, proving that said Island does not belong to the ownership of any individual, corporation, Pueblo, I have in decree of this day declared as I do by these presents declare Don Victor Castro owner in fee of the said Island in all its extent con-

formably with the powers conferred on me by the Supreme National Government. In consequence let this be delivered to the party interested, that it may serve him for a title, and for such other purposes as may be convenient.

Given in Monterey Capital of the Department on the second day of the month of May.

(Signed) JUAN B. ALVARADO

Filed in office Aug. 31st, 1852.

GEO. FISHER,
Secy.

Recorded in Ev. B Vol. 17, p. 606.

GEO. FISHER,
Secy.

DEED FROM CASTRO TO B. SIMMONS & J. B. FRISBEE.

Know all men by these Presents.

That I Victor Castro and Loiza Martinez his wife of Contra Costa in the State of California, for and in consideration of seven thousand five hundred dollars to us paid by John B. Frisbee of Benicia and Bezer Simmons of San Francisco in said California the receipt whereof is hereby acknowledged have bargained and sold and by these presents do grant and convey unto the said John B. Frisbee and Bezer Simmons their heirs and assigns all that tract of land lying and being in said California and described as follows viz. Being that

tract of land situated near the Straits of Carquinez in the Bay of San Francisco and at the mouth of Napa Creek, the said Creek bounding it to the Northward, the said tract of land being known as "Isla de la Yegua" or Mare Island being the same land granted to me the said Castro on the twentieth day of May A. D. 1841 by Juan B. Alvarado Governor of California, the original grant being referred to made a part of this deed and herewith transferred to the said Frisbee and Simmons.

To Have and to Hold the said described and conveyed premises with all the appertiances unto the said John B. Frisbee and the said Bezer Simmons their heirs and assigns to them and their own use & behoof forever.

And I the said Victor Castro for myself, my heirs executors and administrators covenant hereby to and with the said John B. Frisbee and the said Bezer Simmons their heirs executors administrators & assigns that I am lawfully seized in fee of the afore granted premises, that they are free from all encumbrances, that I have good right to sell and convey the same to the said John B. Frisbee and Bezer Simmons as aforesaid, and that I will, and my heirs executors and administrators shall warrent and defend the same to the said John B. Frisbee and the said Bezer Simmons their heirs and assigns against the lawful claims and demands of all persons.

And for the consideration aforesaid and for divers other good and valuable considerations I Luiza

Martinez wife as aforesaid of the said Victor Castro, I do hereby release and quit claim unto the said John B. Frisbee and Bezer Simmons their heirs and assigns all my right claim or passability of dower or other interest in or out of the afore-discribed premises.

In Witness Whereof we the said Victor Castro and Loisa Martinez his wife hereunto set our hands and seals this twenty eighth day of May A. D. eighteen hundred and fifty.

VICTOR CASTRO (L S)

Executed and delivered in the presence of
(the word "grant" being first interlined)

Witnesses to Victor Castro

VON PRUDEN.

Witness O. LIVERMORE

State of California,
County of San Francisco.

At San Francisco this twenty eighth day of May A. D. eighteen hundred and fifty before me personally appeared Victor Castro known to me as the person executing the foregoing instrument and acknowledged the same to be his free act and deed.

Before me

[Seal] EDW. McGOWAN J. P.

Filed in office Sept. 10, 1853.

(Signed) GEO. FISHER,
Secy.

DEED. FRISBEE TO ASPINWALL.

Know all men by these Presents

That I John B. Frisbee of Benicia in the State of California for and in consideration of five thousand dollars to me paid by William H. Aspinwall of New York the receipt whereof is hereby acknowledged have granted, bargained, sold, released and conveyed, and by these presents do grant, bargain, sell release and convey unto the said William H. Aspinwall his heirs and assigns one half of all my right, title, interest & Estate in and to that tract of land situated near the Straits of Carquinas in the Bay of San Francisco and at the mouth of Napa Creek, the said Creek bounding it on the Northward the said tract of land being known as "Isla de la Yegua" or Mare Island being the same tract of land granted by Juan B. Alvarado Gov. of California to Victor Castro by grant or patent dated the twentieth day of May, A. D. 1841, and by said Castro conveyed to said John B. Frisbee and Bezer Simmons on the twenty eighth day of May A. D. 1850—meaning hereby to convey to said William H. Aspinwall his heirs and assigns one quarter part of the whole of said Island excepting from the whole of said Island the one tenth part and the one sixteenth part of which have heretofore been conveyed by said Frisbee and Simmons to Victor Castro and William P. McArthur with all the privileges and appertenances thereto belonging.

To Have and to Hold the said described and conveyed premises to said William H. Aspinwall his heirs and assigns, that I am lawfully seized in fee of the aforesaid premises, and that they are free from all encumbrances, that I have good right to sell and convey the same to the said William H. Aspinwall as aforesaid and that I will, and my heirs executors and administrators shall warrant and defend the same to the said William H. Aspinwall his heirs and assigns forever against the lawful claims and demands of all persons.

In Witness Whereof the said John B. Frisbee have hereunto set my hand and seal this fifteenth day of August A. D. 1850.

JOHN B. FRISBEE.

Signed, Sealed and delivered in presence of
H. W. Halleck
John B. Peachy.

State of California,
County of San Francisco.—ss.

On this 15th day of August A. D. 1850 before me Thomas Tilder a Notary Public duly commissioned for the County aforesaid personally appeared John B. Frisbee to me known to be the person described in and who executed the within and foregoing deed and asknowledged that he executed the same of his own free act and deed for the purposes therein set forth.

Given under my hand and seal the day and year last above written.

[Seal] THOMAS TILDER
Notary Public

Filed in office Oct. 19, 1854.

(Signed) GEO. FISHER,
Secy

DEED. CASTRO TO BISSELL.

Know all me by these presents that I Victor Castro of the township of Contra Costa and County of Contra Costa in the State of California for and in consideration of the sum of eighteen hundred dollars to me in hand paid by George W. P. Bissell of the City of San Francisco and the State aforesaid at or before the execution and delivery hereof the receipt whereof I do hereby acknowledge, have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said Geo. W. P. Bissell his heirs and assigns forever all my right, title and interest in and to the one undivided tenth part (1/10th) of the tract of land situated in the State of California near the Straits of Carquinas in the Bay of San Francisco at the mouth of Napa Creek, the said Creek bounding the said tract to the Northward which said tract of land is called "Isla de la Yegua" or Mare Island, and being the same tract of land originally granted to said Castro by Juan B. Alvarado Gov. of Cali-

fornia by grant bearing date the 20th day of May A. D. 1841 and by the said Castro conveyed to John B. Frisbee and Bezer Simmons by deed bearing date the 28th day of May A. D. 1850, and the above one tenth part of said land reconveyed by the said Frisbee & Simmons to the said Castro by deed bearing date the 28th day of May A. D. 1850.

To Have and to Hold the said one undivided tenth part with all the appertenances unto the said Geo. W. P. Bissell his heirs and assigns to his and their own use and behoof forever. And I the said Victor Castro for myself and my heirs, executors and administrators do covenant to and with the said George W. P. Bissell his heirs and assigns that I am lawfully seized in fee of the afore granted premises that they are free from all encumbrances that I have good right to sell and convey the same to the said Geo. W. P. Bissell as aforesaid and that I will and my heirs, executors and administrators shall warrent and defend the same to the said Geo. W. P. Bissell his heirs and assigns against the lawful claims and demands of all persons, and failing so to do I the said Victor Castro for myself and my heirs, executors and administrators do covenant with the said Geo. W. P. Bissell his heirs and assigns that I will and my heirs, executors and administrators shall be held in damages to the said Geo. W. P. Bissell his heirs and assigns in such sum as the said Geo. W. P. Bissell his heirs and assigns may sustain not exceeding the sums mentioned in the consideration of these presents.

In Witness Whereof I the said Victor Castro have hereunto set my hand and seal this twentieth day of July in the year of our Lord one thousand eight hundred and fifty two.

[Seal] VICTOR CASTRO

Signed, Sealed and delivered in presence of
CHAS. H. H. CORK.
S. W. MOORE.

State of California,
City and County of San Francisco.—ss.

On this 20th day of July A. D. 1852 before me a Notary Public in and for the City and County of San Francisco, State aforesaid, personally appeared Don Victor Castro to me well known to be the person described in and who executed the foregoing conveyance and acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In Testimony Whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

[Seal] SAMUEL W. MOORE
Notary Public

Filed in office Oct. 20, 1854.

(Signed) GEO. FISHER,
Secy.

DEED, FRISBIE AND SIMMONS TO V. CASTRO.

Know all men by these presents that we John B. Frisbee of Benicia and Bezer Simmons of San Francisco of California for and in consideration of Ten thousand dollars to me paid by Don Victor Castro of Contra Costa in said California the receipt whereof is hereby acknowledged have bargained and sold and by these presents do grant and convey unto the said Castro, his heirs and assigns, one undivided tenth part (1/10) of the tract of land situated in California near the Straits of Carquinas in the Bay of San Francisco at the mouth of Napa Creek the said Creek bounding the said tract to the northward which said tract of land is called "Isla de la Yegua" or Mare Island and the same tract of land this day conveyed by said Castro to said Frisbee and said Simmons it having been originally decreed to said Castro by grant from Juan B. Alvarado, Gov. of California, dated the 20th day of May, A. D. 1841.

To Have and to Hold the said one undivided tenth part with all the appurtenances unto the said Victor Castro, his heirs and assigns to his and their own use and behoof forever.

And we the said John B. Frisbee and Bezer Simmons for ourselves and our heirs, executors and administrators, covenant to and with the said Castro his heirs and assigns that we are lawfully seized in fee of the aforegranted premises that they are free from all incumbrances that we have good right to

sell and convey the same to the said Castro as aforesaid and that we will and our heirs, executors and administrators shall warrent and defend the same to the said Castro, his heirs and assigns against the lawful claims of all persons whatever.

In Witness Whereof I, John B. Frisbee and I, Bezer Simmons acting by my attorney in fact Frederick Billings duly authorized by power of attorney dated December 26 A. D. 1847 recorded in archives of San Francisco Book M of Deeds, page 70, hereto set our hands and affix our seals at San Francisco this twenty-eighth day of May the year Eighteen hundred and fifty at San Francisco.

[Seal] JOHN B. FRISBEE,

[Seal] BEZER SIMMONS,
by his attorney in fact
FREDERICK BILLINGS.

Executed and delivered in presence of
ARCHA C. PEACHY,

the word "thousand" interlined, 1st page, fourth written line from top before execution.

VON PRUDEN.

J. MAN'L ALLEN.

State of California,
County of San Francisco—ss.

On this 21st day of July, A. D. 1852, before me the subscriber a Notary Public in and for said county personally came Frederick Billings known

to me to be the person who is the attorney-in-fact of Bezer Simmons executed the within deed and acknowledged to me that he executed the same freely and voluntarily as the act and deed of Bezer Simmons by virtue of a power of attorney for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto subscribed my name and affixed my Notarial Seal the day and year last above written.

[Seal] ROYAL H. WALLER,
Notary Public.

State of California,
County of Sonoma—ss.

On this 28th day of July, A.D. 1852 before me the undersigned County Clerk of Sonoma County personally appeared John B. Frisbee to me known to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and seal of court affixed at office in City of Sonoma this day and year last above written.

[Seal] JOHN H. BREWSTER
Deputy Clerk of Sonoma County.

Filed in Office, Oct. 20, 1854.

(Signed) GEO. FISHER,
Secy.

DEED. F. BILLINGS, ET AL., ASSIGNEES TO G. W. P. BISSELL.

Know All Men by These Presents, that we, Frederick Billings, James R. Bolton and Henry W. Halleck, all of the City of San Francisco in the State of California, assignees of the real estate and personal property of the late firm of Simmons Hutchinson and Company of the said City of San Francisco, composed of Bezer Simmons and William H. Stowell by virtue of a certain deed duly executed dated the 3d day of September A. D. 1850, recorded in the office of the Records of the County of San Francisco in Book No. 1 Deeds of Trust, page 32. Also assignees of the Real Estate and personal property of the late Bezer Simmons of said San Francisco by virtue of a certain deed duly executed dated the third day of September, A. D. 1852, recorded in the office of the Recorder of the County of San Francisco in Book No. 1, Deeds of Trust, page 29, that we as such assignees and acting under and by virtue of said deeds parties of the first part in consideration of twenty-five hundred dollars to us in hand paid the receipt whereof is hereby acknowledged by George W. P. Bissell of said San Francisco party of the second part have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said party of the second part his heirs and assigns. All our right, title, interest and claim of in and to the undivided one-half part of Sixty Seven Eightieths (67/80) of Mare Island, so called situated in the Bay of San Pablo

which said Island was provisionally granted by Gov. Jimeno on the 31st day of October, A. D. 1840 and afterwards on the 20th day of May, 1841, granted by Governor Alvarado to Victor Castro, and by said Castro conveyed to Frisbee and Simmons on the 28th day of May, 1850 and the interest of said Simmons conveyed to said assignees as aforesaid.

To Have and To Hold the said mentioned premises with all the appurtenances unto the said party of the second part, his heirs and assigns to his and their use and behoof forever.

In Witness Whereof we the parties of the first part hereto set our hands and seals this the first day of July, the year of our Lord, one thousand eight hundred and fifty-two at San Francisco, aforesaid.

[Seal] FREDERICK BILLINGS
Assignee of Bezer Simmons and Assignee of Simmons, Hutchinson & Co.

[Seal] H. W. HALLECK,
Assignee of Bezer Simmons and Assignee of Simmons, Hutchinson & Co.

[Seal] JAMES R. BOLTON,
Assignee of Bezer Simmons and Assignee of Simmons, Hutchinson & Co.

Executed and delivered in presence of
R. H. WALLER.

State of California,
County of San Francisco—ss.

On this 16th day of July, A. D. 1852 personally appeared before me the subscriber, a Notary Public in and for said County, Frederick Billings, H. W. Halleck and James R. Bolton, known to me to be the individuals described in and who as the assignees of Bezer Simmons and of Simmons, Hutchinson & Co., and who executed the foregoing conveyance and severally acknowledged to me that they executed the same as such assignees freely & voluntarily for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my Notarial Seal on the day and year last above written.

ROYAL H. WALLER,
Notary Public.

Filed in office, Oct. 20, 1854.

(Signed) GEO. FISHER,
Secy.

DEED. SIMMONS TO BILLINGS, ET AL.

This Indenture made this third day of September A. D. One Thousand Eight Hundred and Fifty between Bezer Simmons of San Francisco in the State of California, party of the first part and Frederick Billings, James R. Bolton and H. W. Halleck of said city, parties of the second part,

Witnesseth that the said party of the first part in consideration of the sum of One Dollar to him in

hand paid by the said parties of the second part the receipt whereof is hereby acknowledged and for the further considerations hereinafter specified, hath given granted bargained and sold and by these presents do give, grant, bargain and sell unto them the said parties of the second part all those lands, tenements and hereditaments lying and being in the State of California which are more particularly specified and described in a Schedule hereto annexed and made part hereof, marked Schedule "A". To Have and To Hold unto them the said parties of the second part, their heirs and assigns forever. In trust, nevertheless and to and for the following uses, interests and purposes that is to say that the said parties of the second part shall take possession of all and singular the said lands & tenements hereby conveyed or intended to be conveyed and sell and dispose of the same either at public or private sale to such person or persons for such prices and on such terms and conditions, and either for cash or upon credit as in his judgment may appear best and most for the interest of the parties concerned and convert the same into money and therefore to execute, acknowledge and deliver good and sufficient deeds and instruments of conveyance necessary to effect a sale and transfer of any and all estates and property hereby conveyed or intended so to be, and by and with the proceeds of such sales the said parties of the second part shall first pay and disburse all the just and usual expenses, costs, charges and commissions of making executing and convey-

ing unto full effect this assignment and the objects thereof and the residue of the proceeds of such sales shall be considered as the nett avails or proceeds of the property hereby conveyed.

And first by and with the said nett proceeds of the said parties of the second part shall pay and discharge in full all the debts, obligations and demands due or to become due by the party of the first part or in any wise existing against him together with all interest which may be due thereon at the time of payment.

And secondly by and with the rest residue and remainder of said nett proceeds if any shall remain after the payment in full of said debts and private liabilities of the party of the first part, the said parties of the second part shall pay and discharge the partnership debts mentioned in the deed of assignment this day made by the said Bezer Simmons and William H. Stowell to the said parties of the second part and hereby referred to according to the order and arrangement established by the said deed for the payment of the debts therein mentioned or referred to.

And the said party of the first part also assigns and conveys to the said parties of the second part all the goods, chattels, vessels, boats and personal property of any kind mentioned in the said Schedule "A" hereto annexed in which for the uses and purposes herein set forth as those to which the proceeds of the Real Estate above conveyed are to be devoted.

In testimony whereof the party of the first part hath hereunto set his hand and affixed his seal on the day and year first herein written.

BEZER SIMMONS.

Signed, sealed and delivered in presence of
ARCHA C. PEACHY,
C. TEMPLE EMMETT.

State of California,
County of San Francisco.—ss.

At San Francisco on this the third day of September A. D. 1850 personally appeared before me a Notary Public in and for said County Bezer Simmons well known to me to be the party described in and who executed the foregoing instrument and acknowledged that he executed the same freely and voluntarily and for the purposes therein mentioned.

In Witness Whereof I have hereunto set my hand and official seal the day and year above written.

[Seal] C. TEMPLE EMMETT
Notary Public

SCHEDULE "A"

Schedule of property belonging to Bezer Simmons referred to in his deed of assignment.

The Rancho known as Novato Rancho in Marin County purchased of Jacob P. Luse and Rosalia Vallejo his wife November 24, 1846, save a small

portion heretofore conveyed to Benjamin Franklin Simmons with the improvements and my stock thereon.

Seven sixteenths of the Peninsula forming an area of the Bay of San Diego, purchased of—

The following property in the City of San Francisco.

One undivided half of one hundred vara lot numbered eighty eight. Forty varas by fifty varas of fifty vara lot numbered two hundred and eighty five.

Western half of fifty vara lot numbered two hundred and three. Southern half of lot numbered thirty eight fifty vara lot.

About one hundred and forty five lots in Sacramento City the exact number and locality of the same can be ascertained by the origimal deeds of John A. Sutter to said Simmons dated November 24th A. D. 1849, and recorded in Sacramento and certain deeds of the lots so conveyed by Sutter given by me to Betheul Phelps, Isaac Y. Matt, Alice Farnham, Franklin N. Billings and Mrs. Ann S. Kegler.

The following property in the City of Benicia viz., The Western half of Lot One (1) in block (5). Lot Six (6) in block Twenty Six. Lot Sixteen (16) in block Forty Seven. Lot Fourteen (14) in Block Forty Eight. Lot Six in block Fifty. Lot Sixteen in Block Fifty One. Lot Sixteen in block Fifty Three.

One undivided fourth part of the ship Magnolia.

A note for two thousand dollars signed by John F. Pope.

Recorded in Co. Recorders office Sept. 4th 1850 10 A. M. in Book No. 1 of deeds of trust p. 29.

JOHN A. McGLYNN,
County Recorder

By JAMES O'GRADY,
Deputy

Filed in office Nov. 7th, 1854.

(Signed) GEO. FISHER,
Secy.

DEED.

SIMMONS & STOWELL TO BILLINGS, ET AL.

This Indenture made this third day of September in the year one thousand eight hundred and fifty between Bezer Simmons and William H. Stowell copartners in trade and business under the name firm and style of Simmons Hutchinson & Co. of the first part and Frederick Billings, James R. Bolton and H. W. Halleck, of the City of San Francisco parties of the second part,

Witnesseth.

That whereas the said copartnership is jointly indebted in sundry considerable sums of money and by reason of severe losses which have recently attended its business operations has become unable to pay and discharge all its liabilities with punctuality

in full, and the said parties of the first part are now desirous of making a fair and just distribution of their property and effects among their creditors.

Now therefore this Indenture Witnesseth that said parties of the first part in consideration of the premises and the sum of one dollar to each of them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged have granted, bargained and sold, released, assigned transfered and set over and by these presents do grant, bargain, sell, release, assign, transfer and set over unto the said parties of the second part and to their heirs and assigns forever all and singular the lands, tenements and hereditaments situate, lying and being within the State of California also all the goods, chattles, steamboats, merchandize, bills, bonds, notes, book accounts, claims, demands, choses in action, books of account, evidences of debt and property of every name, nature and description whatever and wheresoever of the said Bezer Simmons and William H. Stowell the parties of the first part more particularly enumerated and described in the schedule hereto annexed marked "A" and made part of this Indenture.

To Have and to Hold the same and every part and parcel thereof with the appurtenances to the said parties of the second part their heirs and assigns forever.

In trust nevertheless and to and for the following uses, intents and purposes that is to say the said parties of the second part shall take posses-

sion of all and singular the lands, tenements and hereditaments and all other property hereby assigned or intended so to be, and sell and dispose of the same either at public or private sale to such person or persons for such prices and on such terms and conditions and either for cash or upon credit as in their judgment may appear best and most for the interest of the parties concerned, and covenant the same unto money, and also to collect all and singular the said debts, dues, bills, bonds, notes, accounts, claims, demands, and choses in action, or so much thereof as may prove collectable and therefore to execute, acknowledge and deliver good and sufficient deeds, bills of sale, releases and all other instruments of conveyance that may be necessary and proper to effect a sale and transfer of any and all the estates, property and effects hereby conveyed or intended so to be and by deed with the proceeds of such sales and collections the said parties of the second part shall first pay and disburse all the just, reasonable and usual expenses, costs, charges and commissions of making and conveying into effect this assignment and the objects thereof and the residue of the proceeds of such sales and collections shall be considered as the nett avails or proceeds of the property and effects hereby assigned.

And first by and with the said proceeds the said parties of the second part shall pay and discharge in full the following sums of money to the persons to whom they are respectively due, that is to say George H. Howard three thousand dollars ($3000)

to Flint Peabody & Co. three thousand dollars ($3000) to Wells & Co. two thousand dollars ($2000) with legal interest from the date of this assignment. The said debts are mentioned in Schedule "B". And secondly by and with the residue and remainder of said nett proceeds if any shall remain after the payment in full of the debts and liabilities mentioned in Schedule "B" the said parties of the second part shall pay and discharge all sums of money due upon deposit made with the firm of Simmons Hutchinson & Co. when said firm was composed of Bezer Simmons, William H. Stowell, John F. Pope and Titus Hutchinson as well as when composed of the said parties of the first part provided that said deposits were made without arrangement between the depositors and the said firm of Simmons Hutchinson & Co. that the money or gold dust deposited should bear interest, and also whatever sums of money shall be due or become due to the owner of the Steamer Gold Hunter. The above mentioned debts which are set forth in Schedule "C" shall be paid in full if such remainder shall prove sufficient for that purpose and if unsufficient then the parties of the second part shall apply such remainder to the payment and liquidation of said debts and demands mentioned in Schedule "C" pro rata share and share alike according to their respective amounts as far as such remainder will *satnd* for that purpose and in the foregoing class of creditors shall be included the firm of G. S. Robbins & Son of the City of New York Bankers the

amount of indebtedness to whom is stated in said Schedule "C".

And thirdly by and with the rest, residue and remainder of said nett proceeds if any shall remain, after paying & discharging the debts and demands aforesaid the said parties of the second part shall pay & discharge all the other copartnership debts demands and liabilities whatsoever now existing whether due or hereafter to become due against the firm of Simmons Hutchinson & Co. when composed of the said Bezer Simmons, Titus Hutchinson, John F. Pope and William H. Stowell partners as well as when the said firm was composed of the parties of the first part partners therein provided such remainder shall prove sufficient for that purpose and if insufficient then said parties of the second part shall apply such remainder to the payment and liquidation of such debts & demands pro rata share and share alike according to their respective amounts as far as such remainder will extend for that purpose.

And lastly the said parties of the second part shall return the surplus if any remain after paying the debts and demands aforesaid to the said parties of the first part their executors, administrators, or assigns and for the better execution of these presents and of the several trusts hereby reposed the said parties of the first part do hereby make, nominate, constitute and appoint the said Frederick Billings their and each of their true and lawful attorney irrevocable with power of substitution and

revocation with full power and authority in the name of the said parties of the first part and their and each of their legal representatives or otherwise to do, transact and perform all acts, deeds, matters and things in the full execution of these powers.

And the said parties of the first part for themselves and their and each of their heirs, executors and administrators covenant and agree to and with the said parties of the second part that they will when requested make or cause to be made such further assignments, deeds and conveyances as shall be necessary to carry into full and complete effect the intentions of the parties to these presents.

It is understood that this deed of assignment is a deed of trust for the lawful benefit of the creditors of the present firm of Simmons Hutchinson & Co. composed of the parties of the first part and also the creditors of the firm of Simmons Hutchinson & Co. as it was formaly constituted when Titus Hutchinson and John F. Pope were also partners aside from the preference hereinbefore given to certain creditors, the creditors of the two firms doing business under the same name being treated alike.

In testimony whereof the parties to the first part have hereunto set their hands and affixed their seals on this third day of September A. D. one thousand eight hundred and fifty.

BEZER SIMMONS.

W. H. STOWELL.

Signed, Sealed and delivered in the presence of the words "creditors of the" having been interlined on the last line of the fith page before the execution hereof.

ARCHA C. PEACHY
C. TEMPLE EMMETT.

State of California,
County of San Francisco.—ss.

At San Francisco on this the third day of September A. D. eighteen hundred and fifty personally appeared before me a Notary Public within and for said County Bezer Simmons and William H. Stowell well known to me to be the parties described in and who executed the foregoing instrument and each acknowledged that he executed the same freely and voluntarily and for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and seal affixed the day and year above written.

[Seal] C. TEMPLE EMMETT
Notary Public

SCHEDULE "A"

Property belonging to Simmons Hutchinson and Company being Schedule "A" referred to in the foregoing deed of assignment.

Beach and Water Lot No. One hundred and twenty one with store thereon situated on Clay Street between Montgomery and Sansome, mort-

gaged to Wells & Co. to secure the payment of a note for fifteen thousand dollars.

Three Fifteenths (3/15) of Steamer Gold Hunter mortgaged to Wells & Co. to secure the payment of a note for Twenty five thousand dollars.

Ten twenty-fourths (10/24) of Steamer McKim mortgaged to Wells & Co. to secure the payment of a note for Fifteen thousand dollars.

One undivided half of twenty lots bought of Dr. B. F. Edwards and situated on Chestnut, Jones and Greenwich Streets on the North Beach.

Lot on Front Street, Sacramento City, between "M and N" twenty-five feet front and one hundred and sixty feet deep to an ally with the store thereon.

One undivided half of Sixty-seven Eightieths (67/80) of Mare Island in San Pablo Bay.

Lot on M Street in Vernon with store thereon, said lot being twenty five feet front and one hundred twenty-five feet deep.

About Eight hundred lots in Vernon and an individual interest in the lands adjoining the town.

One undivided sixth part of the Rancho known as Llano Seco on the Sacramento River.

One half of Steamboat building by Watters Butcher & Co. at Rincon Point.

One Eighteenth of Steamer Hartford and one eighteenth of her dividens since July 1st.

Three Eighths of Steamer Bute.

One third of Bark Whitace.

One fourth of Bark Dinan.

Storeship Florence with Scows, Launches and Boats.

About two hundred thousand feet of lumber on the North Beach.

About one hundred thousand feet of lumber at Alviso.

About thirty thousand feet of lumber at Sacramento City.

About Sixty thousand shingles at do, do.

Counting Room furniture consisting of Desks, Safes, Gold Scales, Stoves, etc.

Lot in Block fifteen in Town of Benicia.

A large amount of Book accounts and notes due the said firm of Simmons Hutchinson & Co., the amount of which will be particularly ascertained by reference to the backs of said notes.

Small amount of merchandise in store.

Recorded in Co. Recorder's office, Sept. 4, 1850 at 10 a. m. in Book No. 1 Deeds of Trust, on page 32.

JOHN A. McGLYNN,
County Recorder.

By JAS. O'GRADY,
Deputy.

Filed in office, Nov. 7, 1854.
(Signed) GEO. FISHER,
Secy.

OPINION OF THE BOARD DELIVERED BY COMMISSIONER S. B. FARWELL.

GEORGE W. BISSELL, ET AL.,

vs.

THE UNITED STATES.

For a Place called Mare Island in the Bay of San Francisco in the County of Sonoma.

The claimants in this case ask confirmation of their title which they derive from Victor Castro, by virtue of a grant issued to the said Castro, on the 20th day of May, 1841, by Governor Juan B. Alvarado, and have offered in evidence in support of their claim the original grant to the said Castro, and also various deeds of conveyance from different persons through whom the title has passed from the said Castro showing a correct chain of title from the said Castro of his interest to the present claimant.

Strong suspicion has been raised by the testimony as to the genuineness of the grant.

It is written on the back of the same half sheet that contains a provisional grant to the same party executed by Manuel Jimeno, acting as Governor on the 31st day of October, 1840. And it would seem from inspection of the document that it would be highly impossible that any person whose attention was drawn to the inspection of the document and examine the contents of the first and provisional grant without noticing the contents of the second page, as it is written in quite a heavy hand and shows quite

plainly through the paper. Mr. Misner, a witness on the part of the government, testifies that a document similar to the provisional grant now under consideration and in his opinion the same one, was handed to him sometime in the year 1850 to be translated with the view of getting advice as to the legal effect, and he says that he translated that part of the document, and did not observe anything that now appears on the other side of the paper.

Stephen Cooper swears that sometime in 1850 he saw a similar paper, which was shown to him by Mr. Frisbie, one of the then claimants of the Island in order to show witness that he, Frisbie, had a title to the Island, and he said to Mr. Frisbie, "It was strange that this writing appears here now, and it was not here in the winter of 1847 and 1848." And says that he does not know whether he formed his impressions that the grant was attached after 1848, by former inspection of the documents or from heresay.

Mr. McDonald's testimony is similar to that of Mr. Cooper.

There is no doubt but that the body of the grant on the second page is in the hand writing of Governor Alvarado, and that his signature thereto is genuine.

The only question is as to the time the same was made and executed.

Governor Alvarado as a witness in the case, and swears positively that he wrote the grant and signed

it himself at the time and place that it purports to have been done.

The testimony on the part of the government is of a negative nature, while that of Governor Alvarado is positive and of course under the rule of law in constructing testimony when the witness in other respects stands unimpeached he must receive greater weight when he affirms facts of a positive nature, and in which he could not be mistaken.

In the present case Governor Alvarado could not be mistaken as to the facts that he has sworn to. He either did execute the grant officially as Governor at the time it purports to have been done, or he committed a forgery in the subsequent execution thereof and perjury in swearing to the time and place of its execution, for the case presents a state of facts in which Governor Alvarado could not well be mistaken, and, from the facts before us we do not feel warranted in discrediting entirely the testimony of Governor Alvarado, and if any force is given to it, it must be for the full extent of his statements, and in that event, this claim must be confirmed and a decree herein will be entered accordingly.

Filed in office, May 8, 1855.

(Signed) GEO. FISHER,

Secy.

GEORGE W. BISSEL, ET AL.,

vs.

THE UNITED STATES.

DECREE OF CONFIRMATION.

In this case after hearing the proofs and allegations, it is adjudged by the Commission that the claim of the said petitioners is valid, and it is therefore deemed that their application for a confirmation thereof be allowed.

The place of which confirmation is hereby given is situate in the Bay of San Francisco and is called "Isla de la Yegua" or Mare Island and being an Island is bounded by the water's edge.

R. AUG THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office, May 8, 1855.

(Signed) GEO. FISHER,
Secy.

ORDER.

And it appearing to the satisfaction of this Board that the land hereby adjudicated is situated in the Northern District of California, it is hereby ordered that two transcripts of the proceedings and of the decisions in this case, and of the papers and evidence upon which the same are founded be made out and duly certified by the Secretary, one of which

transcripts shall be filed with the clerk of the United States District Court for the Northern District of California and the other be transmitted to the Attorney General of the United States.

Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims in the State of California

I, George Fisher, Secretary of the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing sixty-nine pages, numbered from 1 to 69, both inclusive, to contain a true, correct and full Transcript of the Record of the Proceedings and of the Decision of the said Board, of the Documentary Evidence and of the Testimony of the Witnesses, upon which the same is founded, on file in this Office, in Case No. 307 on the Docket of the said Board, wherein G. W. P. Bissel and William H. Aspinwall are the Claimants against the United States, for the place known by the name of "Ysla de Yegua" or "Mare Island."

In Testimony Whereof, I hereunto set my hand and affix my private Seal (not having a Seal of Office) at San Francisco, California, this twentieth day of October A. D. 1855, and of the Independence of the United States of America the eightieth.

[Seal] GEO. FISHER,
Secy



[Endorsed]: U. S. District Court. S. F. U. S. vs. Stewart, No. 2685. U. S. Exhibit D-1. Filed June 8, '37. W. B. Maling, Clerk.

U. S. EXHIBIT D-2

United States Circuit Court of Appeals
for the Ninth Circuit

No. 7522

James E. O'Donnell, et al.,

Appellants,

vs.

United States of America,

Appellee.

CERTIFIED COPY OF TRANSCRIPT IN CAUSE No. 311, N. D. IN DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Volume II

Office of the Board of Commissioners,
To ascertain and settle the Private Land Claims in the State of California

San Francisco, Oct. 20th, 1855.

J. A. Monroe Esq.
Clerk of the U. S. District Court for the Northern District of California.

Sir;

I herewith transmit you, pursuant to the requirements of the Act of Congress, approved August 31st, 1852, a Transcript of the Record of the Proceedings and of the Decision of this Board, of the Documentary Evidence and of the Testimony of the witnesses upon which the same is founded, in Case No. 307 on the Docket of the said Board, wherein G. W. P. Bissel & William H. Aspinwall are the Claimants against the United States, for the place known by the name of "Ysla de Yegua" or "Mare Island," and request your receipt for the same.

I am, Respectfully,

Your Ob't Servant,
GEO. FISHER, (Sec.)

No. 311

U. S. District Court

Northern Dist. of Cal.

United States

v.

G. W. P. Bissell et al;

NOTICE OF APPEAL

in Case No. 307

Filed Febry 1, 1856

By CHEVERS,
Deputy

Office of the Attorney General of the United States,
Washington, 3 December, 1855.

307 "Ysla de la Yegua," or "Mare Island" G. W. P. Bissel & William H. Aspinwall Claimants.

You will please take notice that in the above case, decided by the Commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 20 day of November, 1855, the appeal in the district court of the United States for the Northern district of California will be prosecuted by the United States.

C. ANTHONY
Attorney General.

No. 311

U. S. District Court

The United States

vs.

G. W. P. Bissell &
Wm. H. Aspinwall

PETITION

Filed Feby 18th, '56

To the Honorable District Court of the United States in and for the Northern District of California.

No. 311

THE UNITED STATES,

Appellants,

vs.

G. W. P. BISSELL and
WILLIAM H. ASPINWALL.

The Petition of the United States, by their Attorney represents: that this cause is an application for a review of the decision of the Board of Commissioners whereby the claim of the said Appellees was confirmed as appears by reference to the records in the case: That a transcript of the said Records was filed in this Court on the 1st day of May, 1855; that a notice of appeal was filed on the 1st day of

Aug. 1855 and that the land claimed lies in the said District. That the said claim is invalid.

Wherefore Appellants pray that the said decision of the Board be reversed & that this court decree the said title to be invalid.

Respectfully &c
S. W. INZE
U. S. Dist. Atty.

No. 311

The United States,
Appellants
vs.
G. W. P. Bissell & W. H. Aspinwall
Appellees

ANSWER OF APPELLEES

Filed Feby 18, '56

Halleck Peachy & Billings
Attys for Appellees

No. 311

In the United States District Court for the Northern District of California.

Transcript No. 307

Mare Island

THE UNITED STATES,

Appellants,

vs.

G. W. P. BISSELL & WM. H. ASPINWALL,

Appellees.

George W. P. Bissell and William H. Aspinwall, appellees, appear by their attorneys, and for answer to the petition of the United States filed herein, say:

That their title to the tract of land called "Ysla de la Yegua" (Mare Island), as set forth and described in their petition to the Board of Commissioners and in the documentary and other evidence filed in this case is a good and valid title; that the land claimed is situate in the Northern Dist. of California and within the jurisdiction of this court.

And they pray this Honorable court to affirm the decision of the Board of Commissioners, and to decree their title to be valid.

HALLECK, PEACHY & BILLINGS
Attys. for Appellees.

No. 311

The United States, Appellants

vs.

Bissell & Aspinwall, Appellees.

INDEX OF CASE

Halleck, Peachy & Billings
Attys. for Appellees.

No. 311

CLAIM OF G. W. P. BISSELL AND WM. H. ASPINWALL TO MARE ISLAND, ABOUT ½ A LEAGUE, IN SONOMA COUNTY

The Transcript in this case (No. 307) contains

I. Petition to Commissioners pp 3 to 5

II. Deposition of S. Cooper (for Government) pp 5 to 8
In 1850 a paper was shown him by Capt. Frisbie; it was translated by Mr. Misner; thinks the paper shown him is the same but is not certain; heard that the paper had been altered, but is not certain that he saw it himself previously.

III. Deposition of J. B. Alvarado (for Claimants) pp 9 to 18
Proves genuiness of title papers, and that he signed the grant as governor at the time the title bears date. Thinks the title was signed in Monterey & that Jimeno reported to him on the application & that he had given the previous grant to occupy the Island; but does not now remember the circumstances. Was only once on the Island; it was then occupied by Castro with horses.

IV. Deposition of M. G. Vallejo (for claimants) pp 19 & 20
Knows the land claimed; it is an Island at the mouth of Napa Creek in San Pablo Bay; contains about half a league, a little more or less. Victor Castro put

horses on the Island in 1839 or 40, and built a corral and kept them there till 1850; he had some 70 or 80 horses there; saw the title papers some 12 years ago; examines originals filed in this case and identifies them as the same he saw 12 years ago.

V.	Juan Josè Castro (for claimants) Witness assisted Victor Castro in putting horses on the Island in 1840; he built a corral and left Indians to take care of the stock.	pp 21 to 25
VI.	Deposition of W. McDaniel (for Govt) Knows nothing about the title but hearsay.	pp 25 to 27
VII.	Deposition of L. B. Mizner (for Govt) About 1850 translated a paper like the 1st page of original title in this case; don't know that it was the same paper; don't know the handwriting; thinks the 2d title was not on it; did not see it; is not certain what year he read it.	pp 27 to 28
VIII.	Espediente and Translation	pp 29 to 34
IX.	Original grants	p 35
X.	Translation	pp 37 & 38
XI.	Deeds of transfer & translations, from the grantee Castro to present claimants	pp 39 to 64
XII.	Opinion of the Board	pp 65 to 67
XIII.	Decree of Confirmation	p 68

Proceedings in U. S. Dist. Court

1st	Transcript	filed	Oct 23d 1855
2d	Notice of Appeal	"	Feby 1st 1856
3d	Petition for Review	"	Feby 18 1856
4th	Answer of Claimants	"	Feby 18 1856

The United States being now the owner of the titles of appellees, a confirmation of this claim inures to the benefit of Government, and no objection is therefore made to a decree in favor of the validity of the claim.

No. 311

In the U. S. Dist. Court
for the Northern Dist. of Cala.

Mare Island

The United States
Appellants

vs.

G. W. P. Bissell &
W. H. Aspinwall
Appellees

DECREE OF CONFIRMATION

H. P. & Billings
Attys for Appellees

No. 311.

In the United States District Court in and for the Northern District of California.

Transcript No. 307. Mare Island.

THE UNITED STATES,

Appellants,

vs.

G. W. P. BISSELL and W. H. ASPINWALL,

Appellees.

Stated Term of the Court, March 2d, 1857. Hon. Ogden Hoffman, Judge.

On appeal from the final decision of the Board of Commissioners to ascertain and settle Private Land claims in the State of California.

DECREE.

This cause came on to be heard at a stated term of the Court on appeal from the final decision of the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California under the Act of Congress approved on the 3d of March A. D. 1851, rejecting the claim.

Upon the Transcript of the proceedings, and decision of the said Board of Commissioners, and the papers and evidence on which the said decision was founded; and it appearing to the Court that the said Transcript has been duly filed according to law and counsel for the respective parties having been heard, it is by the Court hereby ordered, adjudged and decreed, that the said decision be and the same is hereby in all things affirmed; and it is likewise further ordered, adjudged and decreed that the claim of the Appellees is a good and valid claim and that the said claim be and the same is hereby confirmed to the said "Isla de la Yegua" or "Mare Island" with its natural boundaries.

311

United States District
Court, Northern District
of California

The United States

vs.

G. W. P. Bissell &
Wm. H. Aspinwall

ORDER GRANTING APPEAL

Filed April 1st, 1857

JOHN A. MONROE,
Clerk
By W. H. CHEVERS,
Deputy

At a Stated Term of the District Court of the United States of America, for the Northern District of California, held at the Court Room, in the City of San Francisco, on Wednesday the first day of April in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The Honorable Ogden Hoffman, District Judge.

D. C. 311: L. C. 307.

THE UNITED STATES,

vs.

G. W. P. BISSELL and WM. H. ASPINWALL.

In this case on application of the U. S. Attorney made in open Court, it is Ordered by the Court that

an appeal in behalf of the United States from the final decision of this Court rendered at the present term, be and the same is hereby granted; and that a certified transcript of the pleadings, evidence, depositions and proceedings in the said cause be sent to the Supreme Court without delay.

311

U. S. Dist. Court

The United States

v.

Bissell & Aspinwall

STIPULATION

In the District Court of the United States for the Northern District of Cala.

D. C. 311; L. C. 307.

THE UNITED STATES,

vs.

G. W. P. BISSELL and WM. H. ASPINWALL.

In pursuance of notice from the Attorney General of the United States, it is hereby stipulated and agreed that the appeal to the Supreme Court of the United States heretofore g[illegible]nted in this case, be vacated, and that claimants have leave to proceed.

under the decree of this Court heretofore rendered in their favor, as under Final Decree.

San Francisco, ... 1857.

HALLECK, PEACHY & BILLINGS,
Attys. for Appellees.

311

United States District Court
Northern District of California

The United States

vs.

Bissell & Aspinwall

ORDER VACATING APPEAL

Filed ....., ..., 185.....

.....
Clerk

By.....
Deputy

At a Stated Term of the District Court of the United States of America, for the Northern District of California, held at the Court Room, in the City of San Francisco, on ..... the ..... day of ..... in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The Honorable Ogden Hoffman, District Judge.

D. C. 311: L. C. 307

THE UNITED STATES

vs.

G. W. P. BISSELL and WM. H. ASPINWALL.

The Attorney General of the United States having given notice that appeal in this case will not be prosecuted, and a stipulation to that effect having been entered into by the District Attorney:

On motion of the District Attorney it is Ordered, Adjudged and Decreed that the appeal heretofore granted in this case to the Supreme Court of the United States be vacated, and that claimants have leave to proceed under the decree of this Court heretofore rendered in their favor, as under Final Decree.

No. 311

Southrn Division
In the District Court of the
United States for the
Northern District of California

United States of America
Appellant,

vs.

C. W. F. Bissell and W. H.
Aspinwall
Appellees,

DECREE NUNC PRO TUNC

Filed and entered April 15, 1930 Nunc pro tunc as of March 2, 1857.

WALTER B. MALING,
Clerk
By J. A. SCHAERTZER,
Deputy.

Entered in Vol. 25 Judg. and Decrees at page 267.

In the Southern Division of the United States District Court for the Northern District of California.

No. 311—Transcript No. 307. Mare Island.

UNITED STATES OF AMERICA,

Appellant,

vs.

G. W. P. BISSELL and W: H. ASPINWALL,

Appellees.

On appeal from the final decision of the Board of Land Commissioners to ascertain and settle private land claims in the State of California under the Act of Congress, approved on the 3rd day of March, 1851.

DECREE NUNC PRO TUNC.

This cause came on to be heard at a stated term of the Court on Appeal from the final decision of the Board of Commissioners to ascertain and settle private land claims in the State of California, under the Act of Congress, approved the third of March, A. D. 1851, upon the transcript of the proceedings and the decision of said Board of Commissioners confirming the claim of the Appellees and the predecessors in interest, and the papers and evidence on which the said decision was founded; and it appearing to the Court that the said transcript has been duly filed according to law, and Counsel for the respective parties having been heard, it is by

the Court hereby ordered, adjudged and decreed, that the said decision be and the same is hereby in all things affirmed; and it is likewise further ordered, adjudged and decreed, that the claim of the Appellees is a good and valid claim, and that the said claim be and the same is hereby confirmed to the said "Isla De LaYegua" or "Mare Island" with its natural boundaries.

It Further Appearing by the minutes, records and proceedings of this court, that on March 2nd, 1857, the above entitled Court made its Order duly entered in the minutes of said Court, directing the entry of a Decree of Confirmation in the above entitled matter by consent of the United States District Attorney, and that by accident, oversight, inadvertence or excusable neglect, no decree in conformity with said Order and Judgment has as yet ever been entered herein, and that the files of the Clerk of this Court contain an unsigned decree confirming the said decision of the said Board of Land Commissioners, and that this case is still pending and undecided herein;

And It Further Appearing, that all the right, title and interest of the Appellees herein in and to the said claim, have passed to and have been acquired by the United States, the Appellant herein, by purchase from the said Appellees, and that all persons claiming by, under, or through the Appellants or the Appellees or any of them, are chargeable with notice of this action and of everything that has been done therein, and therefore, that no

rights of third persons have intervened or could intervene.

Now, Therefore, on motion of Geo. J. Hatfield, Esq., United States Attorney for the Northern District of California, Attorney for said Appellant, made on the 15th day of April, 1930, that a decree be entered Nunc Pro tunc in conformity with the said Order, and the Court now being fully advised in the premises, the said Motion is hereby granted and it is hereby ordered that this decree of confirmation in said cause confirming in all particulars the decision of said Board of Land Commissioners be entered Nunc Pro Tunc, as of the 2nd day of March, in the year 1857.

Dated in open Court this 15th day of April, 1930.

A. F. ST. SURE,
United States District Judge.

Front

General Abraham
Z.
Victor Castro

Isaac Stone

Copy

Cheo

Do not print



Copy

Manuel Jimeno Casarin Gobernador interino del Departamento de las Californias.

Se le permite provisionalmente, mientras se practican las diligencias de estilo, á Don Victor Castro ocupe con Caballadas la Isla nombrada la Yegua en el Estrecho de los Carquines, sugetandose al cumplimiento de dichas diligencias.

Obtiene Solicitud de la Isla Caballada

En consecuencia entregue este permiso al interesado para su resguardo

Monterey 31 de Octubre 1840

(Firmado) Jimeno

(Firmado) José D. Fernandez Juez interino

Copia

Juan B Alvarado. Gobo Constitucional Propietario del Departamento de Californias.

Por Cuanto Don Victor Castro Mejicano por Nacimiento ha pretendido á este Gobo la propiedad de la Isla nombrada la Yegua situada á las inmediaciones del Estrecho de Carquines en cuya consequencia se le concedio la licencia q. antecede del Sor Don Manuel Jimeno Casarin encargado interinamente de este Gobo y en Virtud de q. el Solicitante ha repetido nuevamente sus instancias probando q. la dicha Isla no pertenece á la Propiedad de

de alguna individuo, pueblo, ó corporacion, he tenido
en dispuesto este dia en declarar como declaro por
el presente, á Don Victor Castro dueño en propie-
dad de la referida Isla en todo su extencion
conforme á las facultades q. me son conferidas
por el Supremo Gob. Nacional.

En consequencia entreguese
esta al interesado para que haga de ella el uso
q. resguardo y de mas fines que le convengan.

Dado en Monterey capital
del Departamento, á los dos dias del mes de Mayo
de 1844.

Firmado / Juan B. Alvarado.

Victor Castro

to

Frisbie and Simons

DEED

This conveyance made and entered into this twenty-fifth day of October in the year of our Lord one thousand eight hundred and forty-nine by Victor Castro, by Mariano G. Vallejo, his attorney, party of the first part and Bezer Simons and John B. Frisbie, witnesseth that the said Victor Castro for and in consideration of the sum of seven thousand five hundred dollars the receipt whereof is hereby acknowledged hath bargained and by these presents doth grant, bargain and sell unto the said Bezer Simons and John B. Frisbie all that tract and parcel of land known as Mare Island situate in San Pablo Bay at the mouth of Napa Creek.

To have and to hold the above released premises the said Bezer Simons and John B. Frisbie, their heirs and assigns to their use and behoof forever.

In Witness Whereof the said Victor Castro by Mariano G. Vallejo, his attorney, as aforesaid hath hereunto set his hand and seal this twenty-fifth day of October in the year of our Lord one thousand eight hundred and forty-nine.

[Seal] VICTOR CASTRO

[Seal] By MARIANO G. VALLEJO

Sealed and delivered in presence of Thos. G. Peachy, Robert R. Pierpont.

District of Sonoma,
Territory of California.

Personally appeared before me Prefect for the District of Sonoma the above named M. G. Vallejo who acknowledged the above signature to be his deed that the above deed was executed for the purposes therein mentioned by Victor Castro by power of attorney granted to said Vallejo.

Witness my hand and seal this 30th day of October, 1849.

[L. S.] CHAS. P. WILKINS,
Prefect for Sonoma District.

Recorded Nov. 3d, 1849.

State of California,
County of Solano—ss.

I certify the foregoing to be a true copy of an instrument of writing of record in my office in Book A, page 442 of Solano County Records

Witness my hand and seal this the 9th day of April, A. D. 1859.

[Seal] WM. J. HOOTON,
County Recorder of said county.
By PERRY WILLIAMS,
Dep. Recorder

DEED

Victor Castro & Loisa Martinez
to
John B. Frisbie & Bezer Simmons
Mare Island

Copy

Know all men by these Presents.

That I Victor Castro and Luisa Martinez of Contra Costa in the State of California, for and in consideration of seven thousand five hundred dollars to us paid by John B. Frisbie of Benicia and Bezer Simmons of San Francisco in said California the receipt whereof is hereby acknowledged have bargained and sold and by these presents do grant and convey unto the said John B. Frisbie and Bezer Simmons their heirs and assigns all that tract of land lying and being in said California and described as follows viz. Being that tract of land situated near the Straits of Carquinez in the Bay of San Francisco; and at the mouth of Napa Creek, the said Creek bounding it to the Northward, the said tract of land being known as "Ysla de Yegua" or Mare Island being the same land granted to me the said Castro on the twentieth day of May A. D. 1841 by Juan B. Alvarado Governor of California, the original grant being referred to made a part of this deed and herewith transferred to the said Frisbie and Simmons.

To Have and to Hold the said described and conveyed premises with all the apurtenances unto the

said John B. Frisbie, and the said Bezer Simmons their heirs and assigns, to them and their own use and behoof forever.

And I the said Victor Castro for myself, my heirs and executors and administrators covenant hereby to and with the said John B. Frisbie and the said Bezer Simmons their heirs and executors administrators and assigns that I am lawfully seized in fee for the afore granted premises, that they are free from all encumbrances, that I have good right to sell and convey the same to the said John B. Frisbie and Bezer Simmons as aforesaid, and that I will my heirs executors and administrators shall warrent and defend the same to the said John B. Frisbie and the said Bezer Simmons their heirs and assigns against the lawful claims and demands of all persons.

And for the consideration aforesaid and for divers other good and valuable consideration I Luisa Martinez wife as aforesaid of the said Victor Castro, do hereby release and quit claim unto the said John B. Frisbie and Bezer Simmons, their heirs and assigns all my right claim or possability of dower or other interest in or out of the aforesaid premises.

In Witness Whereof we the said Victor Castro and Luisa Martinez his wife hereunto set our hands and seals this twenty eighth day of May Anno Domini eighteen hundred and fifty.

(Signed) VICTOR CASTRO (Seal)

Executed and delivered in the presence of
(the word "grant" being first interlined)

Witnesses to Victor Castro
VON PRUDEN.
Witness O. LIVERMORE

State of California,
County of San Francisco.

At San Francisco this twenty eighth day of May A. D. eighteen hundred and fifty before me personally appeared Victor Castro known to me as the person executing the foregoing instrument and acknowledged the same to be his free act and deed.

Before me
[Seal] EDW. GOWAN J. P. (Signed)

Copy
John B. Frisbie & Bezer Simmons
to
Don Victor Castro

DEED

1/10th of Mare Island

Filed for record on the 28th day of July A. D. 1852 at 7 o'clock P. M.

J. HENDLY
Recorder of Sonoma County
By J. H. BREWSTER,
Deputy

And recorded in Book "H" of Sonoma County Records of Land Titles on pp 163, 164 & 165. July 28th A. D. 1852.

J. HENDLY
Recorder
By J. H. BREWSTER
Deputy

Record Fee $4.70

Copy

Know all men by these presents that we John B. Frisbie of Benicia and Bezer Simmons of San Francisco of California for and in consideration of Ten thousand dollars to me paid by Don Victor Castro of Contra Costa in said California the receipt whereof is hereby acknowledged have bargained and sold and by these presents do grant and convey unto the said Castro, his heirs and assigns, one undivided tenth part (1/10th) of the tract of land situated in California near the Straits of Carquinas in the Bay of San Francisco, at the mouth of Napa Creek, the said Creek bounding the said tract to the northward which said tract of land is called Ysla de la Yegua or Mare Island and the said tract of land this day conveyed by the said Castro to said Frisbie and said Simmons it having been originally decreed to said Castro, by grant, from Juan B. Alvarado, Governor of California, dated the 20th day of May, A. D. 1841.

To Have and to Hold the said one undiv ded tenth part with all the appurtenances unto the said Victor

Castro, his heirs and assigns to him and their own use and behoof forever.

And we the said John B. Frisbie and Bezer Simmons for ourselves, our heirs, executors and administrators, covenant to and with the said Castro his heirs and assigns that we are lawfully seized in fee of the aforegranted premises, that they are free from all incumbrances, that we have good right to sell and convey the same to the said Castro aforesaid, and that we will and our heirs, executors and administrators shall warrant and defend the same to the said Castro, his heirs and assigns against the lawful claims of all persons whatever.

In Witness Whereof I, John B. Frisbie and I, Bezer Simmons acting by my attorney in fact Frederick Billings duly authorized by power of attorney dated Dec. 26th A. D. 1849 recorded archives of San Francisco, Book M. of Deeds, page 70, hereto set our hands and affix our seals at San Francisco this twenty-eighth day of May the year Eighteen hundred and fifty.

[Seal] JOHN B. FRISBIE,
[Seal] BEZER SIMMONS,
by his attorney in fact
FREDERICK BILLINGS.

Executed delivered in presence of
RICHARD CARY PEACHY,
the word "thousand" interlined, 1st page, fourth written line from top before execution.
VON PRUDEN.

J. MAN'L ALLEN.

State of California,
County of San Francisco—ss.

On this 21st day of July, A. D. 1852, before me the subscriber a Notary Public in and for said county personally came Frederick Billings known to me to be the person who as the attorney-in-fact of Bezer Simmons executed the within and acknowledged to me that he executed the same freely and voluntarily as the act and deed of Bezer Simmons by virtue of a power of attorney for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto subscribed my name and affixed my Notarial Seal the day and year last above written.

[Seal] ROYAL H. WALLER,
Notary Public.

State of California,
County of Sonoma—

On this 28th day of July, A. D. 1852 before me the undersigned County Clerk of Sonoma County, personally personally appeared John B. Frisbie to me known to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and seal of office in City of Sonoma this day and year last above written.

[Seal] JOHN A. BREWSTER
Deputy Clerk of Sonoma
County.

ASSIGNMENT

Simmons Hutchinson Co. and Bezer Simmons
to
Billings, Bolton and Halleck

Copy

This Indenture made this third day of September in the year one thousand 850 between Bezer Simmons & W. H. Stowel copartners in trade & business under the name style & firm of Simmons Hutchinson & Co. of the 1st part and Fred. Billings, James R. Bolton and H. W. Halleck, of the City of San Francisco, parties of the 2d part,

Witnesseth.

That whereas the said copartnership is jointly indebted in sundry considerable sums of money, & by reason of several losses which have recently attended its business operations has become unable to pay and discharge all its liabilities with punctuality in full, and the said parties of the first are now desirous of making a just & fair distribution of their property and effects among their creditors.

Now therefore this Indenture Witnesseth that the said parties of the first in consideration of the premises and the sum of one dollar to each of them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, & sold, released, assigned, transferred & set over and by these presents do grant,

bargain, sell, release, assign, transfer, & set over, unto the said parties of the second part & to their heirs & assigns forever, all & singular, the lands, tenements, & hereditaments, situate lying & being within the State of California, and also all the goods, chattels, steamboats, merchandise, bills, bonds, notes, book accounts, claims, demands, choses in action, books of accounts, evidences of debt, & property of every name, nature & description whatsoever of the said Bezer Simmons & William H. Stowel, the parties of the 1st part. More particularly situated & described in the schedule hereto annexed marked A and made part of this Indenture.

To Have & to Hold the same & every part & parcel thereof with the appurtenances to the said parties of the second part their heirs & assigns forever.

In trust nevertheless, and to and for the following uses, interests & purposes that is to say that the said parties of the second part shall take possession of all & singular of the lands, tenements and hereditaments & all other property hereby assigned or intended so to be, and sell & dispose of the same, either at public or private sale, to such person or persons, for such prices & on such terms & conditions, and either for cash or for credit, as in their judgment may appear best, and most for the interest of the parties concerned, & convert the same into money, & also to collect all and singular the said debts, dues, bills, bonds, notes, accounts, claims,

demands, and choses in action, or so much thereof as may prove collectable—and thereupon to execute, acknowledge and deliver good & sufficient deeds, bills of sale, releases and all other instruments of conveyance that may be necessary & proper to effect a sale & transfer of any & all the estates, property & effects hereby conveyed or intended so to be—and by and with the proceeds of such sales & collections, the said party of the second part shall first pay & disburse all the just, reasonable & usual expenses, costs, charges, & commissions, of making & conveying into effect the assignment and the objects thereof—and the residue of the proceeds of such sales & collections shall be considered as the nett avails or proceeds of the property & effects hereby assigned.

And first, by & with the said proceeds, the said parties of the second part shall pay & discharge in full, the following sums of money to whom they are respectively due—That is to say to George H. Howard $3000, to Flint Peabody & Co. $3000, to Wells & Co. $2000, with legal interest from the date of this assignment.

The said debts are mentioned in Schedule B.

And secondly, by and with the residue and remainder of said nett proceeds, if any shall remain after the payment in full of the debts & liabilities mentioned in Schedule B the said parties of the second part shall pay and discharge all sums of money due upon deposits made with the firm of Simmons Hutchinson & Co. when said firm was composed of Bezer Simmons, William H. Stowel, John

F. Pope & Titus Hutchinson, as well as when composed of the said parties of the first part, provided that said deposits were made without agreement between the depositors & the said firm of Simmons Hutchinson & Co. that the money or gold dust should bear interest, and also whatever sums of money shall be due or become due to the Steamer Gold Hunter. The above mentioned debts which are set forth in Schedule C shall be paid in full, if such remainder shall prove sufficient for that purpose— and if insufficient then the parties of the second part shall apply such remainder to the payment & liquidation of said debts & demands mentioned in Schedule C pro rata, share and share alike, according to their respective amounts as far as such remainder will extend for that purpose and in the foregoing class of creditors shall be included the firm of G. S. Robins & Son of the City of New York, Bankers, the amount of indebtedness to whom is stated in Schedule C.

And thirdly, by and with the rest, residue and remainder of said nett proceeds if any shall remain. After paying & discharging the debts & demands aforesaid, the said parties of the second part shall pay & discharge all the other copartnership debts demands & liabilities whatsoever now existing, whether due or hereafter to become due against the firm of Simmons Hutchinson & Co. when composed of the said Bezer Simmons, Titus Hutchinson, John F. Pope and William H. Stowel partners, as well as when the said firm was composed of the parties

of the first part, partners therein provided such remainder shall prove sufficient for that purpose and if insufficient then said parties of the second part shall apply such remainder to the payment and liquidation of such debts & demands pro rata, share and share alike, according to their respective amounts as far as such remainder will extend for that purpose.

And lastly the said parties of the second part shall return the surplus if any after paying the debts & demands aforesaid to the said parties of the first part, their executors, administrators, or assigns, and for the better execution of these presents; and of the several trusts hereby reposed, the said parties of the first part do hereby make, nominate, constitute, and appoint the said Frederick Billings, their and each of their true and lawful attorney irrevocable with power of substitution and revocation, with full power and authority in the name of the said parties of the first part, & their and each of them legal representatives—or otherwise, to do, transact & perform all acts, deeds, matters, and things, in the full execution of these powers.

And the said parties of the first part for themselves & their & each of their heirs, executors & administrators covenant & agree to & with the said parties of the second part that they will when requested make or cause to be made such further assignments deeds and conveyances as shall be necessary to carry into full and complete effect the intentions of the parties to these presents.

It is understood that this deed of assignment is a deed of trust for the benefit of the creditors of the present firm of Simmons Hutchinson & Co. composed of the parties of the first part, and also the creditors of the firm of Simmons Hutchinson & Co. as it was formerly constituted when Titus Hutchinson and John F. Pope, were also partners, aside from the preference hereinbefore given to certain creditors; the creditors, of the two firms doing business under the same name being treated alike.

In testimony whereof the parties of the first part, have hereunto set their hands and affixed their seals, this third day of September 1850.

(Signed) B. SIMMONS [Seal]
(Signed) WM. H. STOWELL [Seal]

Signed Sealed and delivered in presence of—the words "creditors of the" having been interlined on the last line of the fifth page before the execution hereof.

Signed and delivered in the presence of
A. C. PEACHY
C. T. EMMETT.

State of California,
County of San Francisco

At San Francisco on this the third day of September A. D. 1850 personally appeared before me a Notary Public, within and for the County, Bezer Simmons and W. H. Stowell, well known to me to be the parties described in and who executed the

foregoing instrument, and each acknowledged that he executed the same freely and voluntarily and for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and seal of office the day and year above written.

[Seal] C. TEMPLE EMMET
Notary Public

DEEDS

Fred'k. Billings and other assignees
to
George W. P. Bissell

Filed for record on this 17th day of July, A. D. 1852, at 9 o'clock p. m.

J. HENDLY
Recorder of Sonoma County

By J. A. BREWSTER.
Deputy

And recorded in Book H of Land Title Records of Sonoma County on pp. 147 & 148 on this July 19, A. D. 1852.

JOHN HENDLY
Recorder

By J. A. BREWSTER
Deputy

Fee $4.70 Pd.

Copy

Know All Men by These Presents, that we Frederick Billings, James R. Bolton, and Henry W. Halleck, all of the City of San Francisco in the State of California, assignees of the real estate and personal property of the late firm of Simmons Hutchinson & Company of the said City of San Francisco composed of Bezer Simmons and William H. Stowel—by virtue of a certain deed duly executed, dated the 3d day of September, A. D. 1850, recorded in the office of the Recorder of the County of San Francisco, in Book No. 1, Deeds of Trust page 32. Also assignees of the Real Estate and personal property of the late Bezer Simmons, of said San Francisco, by virtue of a certain deed duly executed dated the 3d day of September, 1852, recorded in the office of the Recorder of the County of San Francisco, in Book No. 1, Deeds of Trust, page 29, that we as such assignees and acting under and by virtue of said deeds, parties of the first part, in consideration of twenty-five hundred dollars, to us in hand paid, the receipt whereof is hereby acknowledged, by G. W. P. Bissell, of said San Francisco party of the second part, have, granted, bargained, sold and conveyed, and by these presents do, grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, All our right, title, interest, and claim, of in and to the undivided one-half part of Sixty Seven Eightieths (67/80) of Mare Island, so called, situated in the Bay of San Pablo—which said Island was provisionally granted by

Governor Jimeno on the 31st day of October, 1840 and afterwards on the 20th day of May, 1841, granted by Governor Alvarado to Victor Castro—and by said Castro, conveyed to Frisbie, and Simmons on the 28th day of May, 1850 and the interest of said Simmons conveyed to said assignees as aforesaid.

To Have and To Hold the said mentioned premises with all the appurtenances unto the said party of the second part his heirs and assigns, to his and their use and behoof forever.

In Witness Whereof we the parties of the first part hereto set our hands and seals this the first day of July, the year of our Lord, one thousand eight hundred and fifty-two at San Francisco aforesaid.

FRED'K BILLINGS
Assignee of Bezer Simmons
& Assignee of Simmons
Hutchinson & Co.

H. W. HALLECK,
Assignee of Bezer Simmons
& Assignee of Simmons
Hutchinson & Co.

JAMES R. BOLTON,
Assignee of Bezer Simmons
& Assignee of Simmons
Hutchinson & Co.

Executed and delivered in presence of
R. H. WALLER.

State of California
County of San Francisco—ss.

On this 16th day of July A. D. 1852 personally appeared before me the subscriber, a Notary Public in and for said County, Frederick Billings, H. W. Halleck, and James R. Bolton known to me to be the individuals described in and who as the assignees of Bezer Simmons and Simmons Hutchinson & Co. executed the foregoing conveyance and severally acknowledged to me that they executed the same as such assignees freely & voluntarily for the uses and purposes.

In testimony whereof I have hereunto subscribed my name and Seal of office on the day & year last above mentioned.

[Seal] ROYAL H. WALLER,
Notary Public.

[Seal]
[Seal]
[Seal]

DEED

John B. Frisbie
to
Geo. W. P. Bissell

Filed for record on this the 19th day of July A. D. 1852 at 8 o'clock A. M.

J. HENDLEY
Recorder of Sonoma County
By J. A. BREWSTER
Deputy

And recorded in Book "H" of Records of Land Titles in Sonoma County at pp. 148 & 149 on this July 19 A. D. 1852.

J. HENDLEY
Recorder

By J. A. BREWSTER
Deputy

Record fee $3.90.

This Indenture made and executed this sixteenth day of July Eighteen hundred and fifty-two by and between John B. Frisbie of the City and County of Sonoma and State of California of the first part, and G. W. P. Bissell of the City and County of San Francisco and State aforesaid of the second part, Witneseth That the said party of the first part for and in consideration of the sum of four thousand dollars lawful money of the United States of America to him in hand paid the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part his heirs executors, administrators and assigns all the right title and interest of the said party of the first part of, in and to that certain piece of property situate in the County of Sonoma and State of California known as Mare Island, the said interest being one undivided fourth of said Island, less one tenth and one sixteenth of the whole. To Have and to Hold all

and singular the above described premises together with the appurtenances unto the said party of the second part his heirs and assigns forever. In Witness Whereof the said part of the first part has hereunto set his hand and seal the day and year first above written.

[Seal] JOHN B. FRISBIE.

Sealed and delivered in the presence of

M. J. VALLEJO

MARTIN E. COOKE

State of California,
County of Sonoma—ss.

On this sixteenth day of July Eighteen hundred and fifty-two personally appearing before me the within named John B. Frisbie, to me known to be the person named and described in the within Instrument and who executed the same, and acknowledged that he had executed the same voluntarily as his own free act and deed for the uses and purposes therein mentioned. In Witness Whereof I have hereunto set my hand and private seal having as yet no official seal on the day and year above written.

[Seal] MARTIN E. COOKE

Notary Public.

Copy

Don Victor Castro

to

George W. P. Bissell

DEED

1/10th Mare Island

Filed for record on the 28th day of July A. D 1852 at 7 o'clock p.m.

J. HENDLY
Recorder of Deeds
Sonoma Co.

By J. A. BREWSTER
Deputy

And recorded in Book "H" of Sonoma County records of Land Titles on pp. 165, 166 & 167 July 28 A. D. 1852.

J. HENDLY
Recorder

By J. A. BREWSTER
Deputy

Record fees $5.10.

S. W. MOORE (Illegible)
Notary Public

Know all me by these presents that I Victor Castro of the township of Contra Costa and County of Contra Costa, in the State of California for and

in consideration of the sum of eighteen hundred dollars to me in hand paid by George W. P. Bissell of the City of San Francisco and State aforesaid at or before the execution of this deed and delivery thereof the receipt whereof I do hereby acknowledge, have granted bargained sold and conveyed and by these presents do grant bargain sell and convey unto the said George W. P. Bissell his heirs and assigns forever all my right title and interest in and to the one undivided tenth part (1/10th) of the tract of land situate in the State of California near the Straits of Carquinez in the Bay of San Francisco at the mouth of Napa Creek, the said Creek bounding the said tract to the Northward which said tract of land is called "Isla de Yegua" or Mare Island, and being the same tract of land originally granted to said Castro by Juan B. Alvarado Governor of California by grant bearing date the 20th day of May A. D. 1841 and by the said Castro conveyed to John B. Frisbie and Bezer Simmons by deed bearing date the 28th day of May A. D. 1850, and the above one tenth part of said land reconveyed by the said Frisbie & Simmons to the said Castro by deed bearing date the 28th day of May A. D. 1850.

To Have and to Hold the said one undivided tenth part with all the appurtenances unto the said George W. P. Bissell his heirs and assigns to his and their own use and behoof forever. And I the said Victor Castro for myself and my heirs executors and administrators do covenant to and with the said George W. P. Bissell his heirs and assigns that I

am lawfully seized in fee of the afore granted premises that they are free from all encumbrances, that I have good right to sell and convey the same to the said George W. P. Bissell his heirs & assigns against the lawful claims and demands of all persons, and failing so to do, I the said Victor Castro for myself and my heirs executors and administrators do covenant with the said George W. P. Bissell his heirs and assigns in such sum as the said George W. P. Bissell his heirs and assigns may sustain, not exceeding the sum mentioned in the consideration of these presents.

In Witness Whereof I the said Victor Castro have hereunto set my hand and seal this twentieth day of July in the year of our Lord one thousand eight hundred and fifty two.

(Signed) VICTOR CASTRO [Seal]

Signed Sealed and delivered in presence of

CHAS. H. W. COOK.

S. W. MOORE.

State of California,
City and County of San Francisco—ss.

On the 20th day of July A. D. 1852 before me a Notary Public in and for the City and County of San Francisco State aforesaid, personally appeared Don Victor Castro to me well known to be the person described in and who executed the foregoing conveyance and acknowledged that he executed the

same freely and voluntarily for the uses and purposes therein mentioned.

In Testimony Whereof I have hereunto set my hand and affixed my official seal the day and year last above mentioned.

[Seal] SAMUEL W. MOORE
Notary Public

Copy

This Indenture, made and executed this sixteenth day of July Eighteen hundred and fifty-two by and between John B. Frisbie of the City and County of Sonoma and State of California, of the first part and G. W. P. Bissell of the City and County of San Francisco and State aforesaid of the second part Witnesseth That the said party of the first part for and in consideration of the sum of four thousand dollars lawful money of the United States of America to him in hand paid the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part, his heirs, executors, administrators and assigns, all the right title and interest of the said party of the first part of in and into that certain piece of property situated in the County of Sonoma and State of California known as "Mare Island", the said interest being one undivided fourth of said Island, less one tenth and one sixteenth, of the whole. To Have and to Hold all and singular the

above prescribed premises together with the appurtenances unto the said party of the second part, his heirs and assigns forever.

In Witness Whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signed) JOHN B. FRISBIE [Seal]
Sealed and delivered in the presence of

M. J. VALLEJO
MARTIN E. COOKE

State of California,
County of Sonoma.

On this sixteenth day of July Eighteen hundred and fifty-two, personally appeared before me, the within named John B. Frisbie to me known to be the person named and described in the within Instrument and who executed the same voluntarily as his own free act and deed and for the uses and purposes therein mentioned.

In Witness Thereof I have hereunto set my hand and private seal having as yet no official seal on the day and year above written.

[Seal] MARTIN E. COOKE
Notary Public

DEED

John B. Frisbie
to
G. W. P. Bissell

Filed for record on this 19th day of July A. D. 1852 at 8 o'clock A. M.

J. HENDLY
Recorder of Sonoma County
By J. A. BREWSTER
Deputy

And Recorded in Book "H" of Records of Land Titles in Sonoma County on pp. 148 and 149 on this July 19th A. D. 1852.

J. HENDLY
Recorder
By J. A. BREWSTER

Record Fee $3.90.

Wm. H. Aspinwall
to
U. S. A.

BOND & LETTER
Copy of
Mare Island

Know All Men by These Presents: that we William H. Aspinwall and Samuel W. Comstock of the City of New York Merchants are held and firmly bound unto the United States of America in the

penal sum of Two Hundred Thousand Dollars lawful money of the United States to be paid to the said United States or the Secretary of the Navy thereof For which payment well and truly to be made we bind ourselves, our heirs executors, administrators and assigns jointly and severally by these presents.

In Testimony Whereof we have hereunto signed our names and affixed our seals in the City of New York on this twenty eighth day of February in the year Eighteen hundred and fifty three.

Whereas the said William H. Aspinwall in his own right and as Attorney of George W. P. Bissell and also as Attorney for Mary S. McArthur did on the fifteenth day of December eighteen hundred and fifty two enter into a Contract with the Hon. John P. Kennedy, Secretary of the Navy, in conformity with the terms and stipulations relating thereto, expressed in a letter of the said Secretary of the Navy dated on the tenth day of December, Eighteen hundred and fifty two which letter and the assent of the said William H. Aspinwall are on the files of the Navy Department, whereby the said William H. Aspinwall acting for himself and the other parties hereinabove referred to did covenant and agree to sell to the said United States the tract of land in California in the Bay of San Pablo known by the name of Mare Island and did thereby bind himself and all other parties interested in the ownership of the same to convey to the United States by a good and suffi-

cient deed or Deeds the entire and absolute fee simple Estate in the said tract of land known as Mare Island aforesaid which conveyance it was stipulated was to be made in consideration of an agreement on the part of the United States to pay to the said William H. Aspinwall as a full consideration for said purchase whatever portion of the appropriation of one hundred thousand dollars appropriated by Act of Congress of the 31st August 1852 should remain as the unexpended balance thereof after all the expenses of Commission for the selection of a site for a Navy Yard in California and the performance of the duties assigned to the Board of Officers charged with that selection should have been fully paid. And which said Contract or agreement contains also other stipulations which the Parties thereto were to observe all of which will more fully appear by reference thereto the same being appended to this Bond for the interpretation of the same and as a part thereof.

And Whereas the said William H. Aspinwall acting in his own right and as attorney for the said George W. P. Bissell has together with Mary S. McArthur executed a Deed to the United States in pursuance of the above Contract and for the conveyance of the said tract called Mare Island and its appurtenances with covenants for further assurance of the same should be necessary which deed is dated on the fourth day of January Eighteen hundred and fifty three and is deposited with the Secretary of the Navy.

Now the condition of the above written obligation is such that if the said William H. Aspinwall shall well and truly observe perform and fulfil the obligations of the said Contract hereinabove referred to and more particularly set forth in the copy thereof hereto appended and shall at all times hereafter indemnify and save harmless the United States against any claim or title to the said tract called Mare Island and its appurtenances which may be set up by or through any person or persons claiming under Victor Castro and his assigns or others represented by the said William H. Aspinwall, and shall also indemnify and save harmless the United States against any adverse claim or title in any other person or persons or body politic which may within two years from the date hereof, be made and thereafter be successfully established against the title proposed to be conveyed by said William H. Aspinwall and those with and through whom he claims to hold the same by which the full and perfect title of the United States as derived by the conveyance of the said William H. Aspinwall and the parties represented by him may be in anywise impaired diminished or destroyed and if the said William H. Aspinwall and those whom he represents so far as he and they are bound thereto by the covenants of the deed of conveyance herein above referred to and the contract hereinbefore recited procure and executed such further conveyance by Deed or Deeds as may become necessary for the complete establishment and security of the title in the United States in conformity with the true

interest of said contract And also if the said George W. P. Bissell's Power of Attorney to the said William H. Aspinwall shall have been revoked by any matter of fact or of law or if the said George W. P. Bissell shall prior to the date when the Deed herein above referred to or any substitute for the said Deed shall be sent to California and be received there to be registered and recorded (the same to be sent forward without unreasonable delay) have disposed of or encumbered the said lands so that the title to the United States therein may be impaired in which event if all such incumbrances or acts tending to impair the said title be not forthwith removed or defeated and by reason of such failure to remove or defeat them, the Secretary of the Navy should think fit to reconvey or relinquish the said land to the Grantors named in the deed herein above mentioned their heirs and assigns and the said William H. Aspinwall his heirs executors administrators or assigns in that case should refund and repay to the United States the amount which shall have been paid to him on the consideration of the said purchase with interest at the rate of six per cent on the same then upon this and all other contingencies hereinbefore expressed this obligation shall then become void but otherwise it shall stand and remain in full force and virtue according to its tenor and effect.

WM. H. ASPINWALL (L.S.)
SAML W. COMSTOCK (L.S.)

Signed, Sealed and Delivered in presence of:
WM. MACREA.

Navy Department
December 10th 1853

Sir

I have received Mr. Wm. H. Aspinwalls letter of the 4th inst. and yours of the 7th.

Mr. Aspinwall being as you inform me fully authorized to act in behalf of all the owners of Mare Island in California, for the sale of that property to the United States and to make an absolute engagement and Contract for the Sale parties having any interest in this property, I take this occasion to say to you that I am now ready in pursuance of the authority given to me by the 3d Section of the Act of Congress of August 31, 1852 entitled "An Act making appropriations for the Naval Service for the year ending the 30th. of June 1853." Chap CIX of the Statutes at large 1st Sess: 32 Con to conclude a contract for the purchase of Mare Island as recently surveyed and reported by a Board of Officers sent to California for the purpose of selecting a site for a Navy Yard which Board have returned and made their report to this Department.

I understand the basis of a contract proposed by Mr. Aspinwall and by yourself with his authority to be as follows. That Mr. Aspinwall acting for himself and all other parties interested in the ownership of Mare Island, or claiming any interest in the same proposes on their behalf and bind them and himself to convey to the United States

by a good and sufficient deed or the entire and absolute fee simple estate in that tract of land known as Mare Island in California including all the tule or low land and marsh belonging to the same, or which has ever been reputed or claimed to belong to the same, giving a quit-claim and full transfer of all the interest of the proprietors in the same and all privileges, rights or claims to the waters harbors and creeks supposed or claimed to belong to the said tract known as Mare Island.

That this conveyance is to be made in consideration of an agreement on the part of the United States to the said William H. Aspinwall as a full consideration for the purchase, whatever portion of the appropriation of one hundred thousand dollars appropriated by the act of Congress herein above referred to, may remain as the unexpended balance of that appropriation after all the expenses of the Commission for the selection of the site for Navy Yard and the performance of the duties assigned to the Board of Officers charged with that selection shall have been fully paid. That this sum shall be ascertained as soon as practicable by auditing the accounts of expenses of the Commission and deducting the amount at which they may be stated from the whole amount of the appropriation and upon receiving the proper deeds or deeds for a full and perfect conveyance of the title to the tract of land above mentioned with all its appurtenances and privileges made and

executed to the satisfaction of this Department then the amount ascertained as above to be paid to the said William H. Aspinwall.

And it is further proposed as a part of this agreement on behalf of the owners that the United States shall permit a ferry to be established with the shore on the opposite side of the Straits of Carquenaz, with a suitable reservation of five hundred feet square on Mare Island for a landing, which proposition is modified at my instance to be received as follows:

That the United States shall agree to allow a convenient ferry for intercourse with the opposite shore with such reservation of land for a landing place on Mare Island as government may find convenient but this ferry always to be so far under the control of the government as to compel its removal to any part of the public property which may be designated by the Navy Department for the convenience or advantage of the government, whenever or as often as it may become necessary with reference to the security or advantage of the public interest in the operations which may be conducted on Mare Island, and also, if need be, to forbid any communication between the tract called Mare Island and the opposite but upon such conditions as the government may think it necessary to prescribe.

This control being deemed necessary to be reserved to the government with a view to the good order and police regulations of the Navy Yard which it is the design of the government to

establish at this place. It being also understood that no building of any kind shall be erected on Mare Island upon the landing place of any ferry which may be permitted without the consent of the Navy Department and that any building or structure which may be erected with such consent shall be subject to removal at any time by the order or authority of the Navy Department.

I am willing to accept the proposition of Mr. Aspinwall as above stated with the modifications herein made as soon as he shall apprise me of his consent to the sale on these terms which he may do by appending that consent in a note to this letter and returning the same to me.

I am respectfully,
Your obed't Srv't,
JOHN P. KENNEDY

Wm. H. Davidge, Esq.
Agent of W. H. Aspinwall,
New York.

I assent fully and unconditionally to the foregoing on behalf of the several owners of Mare Island.

WM. H. ASPINWALL

New York, Dec. 15, 1842.

The above copy reaffirmed by me as agent of Wm. H. Aspinwall this 1st March, 1853.

WM. H. DAVIDGE

State of California,
County of Solano

The foregoing instruments of writing were received by me for record on the 18th day of April 1853 at 9 o'clock A. M.

JOSEPH P. VAUGHN
County Recorder

State of California,
County of Solano

I certify the foregoing to be true copies of instruments of writing of record in my office in Book H, pages 13, 14, 15, 16, 17 & 18.

Witness my hand and seal of the County Recorder's Office of said County this 9th day of April A. D., 1859.

WM. J. HOOTON
County Recorder of
said County
[Seal] By PERRY WILLIAMS
Dep. Recorder

To All Whom these Presents Shall Come

George W. P. Bissell of the City of San Francisco in California, William H. Aspinwall of the City of New York in the State of New York and Mary S. McArthur of the City of Baltimore, Maryland Send Greeting, Whereas the said parties as tenants in common are owners and proprietors

of a tract of land usually known as Mare Island in California now recently surveyed and agreed to be purchased for the purpose of a Navy Yard for the public use on behalf of the United States of America and which has recently been selected for such purpose, and the interest and proportions of the said owners respectively in the said Island are as follows that is to say of the said George W. P. Bissell fifty eight eightieths parts and one fourth of an eightieth part (the whole being divided into equal eightieth parts) the said William H. Aspinwall sixteen and three fourths eightieths parts and the said Mary S. McArthur as sole devisee of William P. McArthur deceased of the remaining five eightieth parts; and they have agreed to convey the same to the use of the United States of America for the consideration hereinafter expressed paid to them severally and respectively according to their several and respective interests aforesaid with the exception hereinafter expressed.

Now These Presents Witness that the said George W. P. Bissell, William H. Aspinwall and Mary S. McArthur in consideration of the sum of eighty-three thousand four hundred and ninety one dollars to them paid in proportion to their said interests respectively on behalf of the United States of America the receipt of which is hereby acknowledged have granted bargained and sold released and quit claimed and by these presents do grant bargain sell, release and quit claim unto the United States all that tract of land and island called and

known as Mare Island in the Bay of San Pablo as recently surveyed by the Board of Officers of the United States sent to California for the selection of a site for the Navy Yard then including all the tule or low land and marsh belonging to the same or which has ever been separated or claimed to belong to the same and all the waters harbours bays creeks and other waters privileges benefits advantages tenements hereditaments and appurtenances thereunto belonging (excepting only as hereinafter is expressed) with the reversion and reversions, remainder and remainders, rents issues and profits thereof. To have and to hold the same to the United States of America and their assigns forever with the mutual agreement that the said Grantors shall have the right of establishing a ferry to and from the said Island across the Napa Creek the location of which ferry on the shore of the mainland shall be where the Grantors their heirs and assigns shall select with the assent and approval of the Secretary of the Navy of the United States for the time being on the report of the officers at the time representing the Navy department at San Francisco for the landing of which ferry on the said Island to be selected and located by the said grantors their heirs and assigns with such assent and approval as last aforesaid. However ferry privilege and landing place shall be subject to the following control and restrictions on the part of the United States. That the said ferry and landing place, shall at all times for the purpose of police and the regu-

lations of persons and things in the Navy Yard be subject to such orders as the Secretary of the Navy or the proper officer of the United States or of the Navy Department shall from time to time establish for the safety of the public property or the good government of the said Navy Yard and Mare Island and also that no building of any kind shall be erected on the landing place without such consent as aforesaid and also if the Secretary of the Navy for the time being shall for the security or advantage of the United States in reference to the said public use of Mare Island require a removal of the said ferry landing to any other convenient place on the Eastern shore of said Mare Island for the purpose of such landing place and the ferry privilege shall apply to such new landing places and all other terms hereof in relation thereto and so on from time to time as changes in this respect may be found necessary on the part of the United States and on every such change it shall be lawful for said grantors their heirs and assigns to remove any buildings which they may have erected with any fixtures for the purposes of the ferry and on the direction of the Secretary of the Navy for the time being it shall be the duty of the said grantors their heirs and assigns to conform to such removal with all convenient speed.

And the said grantors for themselves according to their several interests aforesaid and each for his heirs and assigns and for all claiming by or under them respectively hereby severally covenant to and with the United States of America and their assigns

that they severally and their heirs and assigns shall and will at the request of the United States of America or their assigns and at their expense execute all such further deeds and other assurances in the Law for the more perfect assurance unto them of the premises hereby purporting to be granted as shall be reasonably advised by their counsel learned in the law.

In Witness Whereof the said George W. P. Bissell by William H. Aspinwall his attorney (by letter of attorney dated July 30th, 1852 herewith delivered) and the said William H. Aspinwall and Mary S. McArthur have hereunto set their hands and seals the fourth day of January, one thousand eight hundred and fifty three.

G. W. P. BISSELL [L.S.]
& WM. H. ASPINWALL [L.S.]
Atty
WM. H. ASPINWALL [L.S.]
MARY S. McARTHUR [L.S.]

Sealed and delivered in the presence of
As to the signature of

G. W. Bissell
W. H. Aspinwall
Atty. and
William H. Aspinwall

WM. MACREA
I. C. LANUM
J. D. PRATT
JNO. D. YOUNG

As to Mary S. Arthur

State of New York .
New York City & County.

I, Joseph C. Laurence, Commissioner in and for the State of New York duly appointed and commissioned by the Governor of the State of California to take the acknowledgments and proof of deeds and other instruments of writing under seal to be used or recorded in same State of California and to administer oaths and affirmations do hereby certify that on the day of the date hereof before me personally came William H. Aspinwall in his individual capacity and as the attorney in fact of George W. P. Bissell the persons described in and who executed the foregoing deed of conveyance and acknowledged that he had executed the same in his individual capacity and as the attorney in fact of George W. P. Bissell one of the parties therein described by virtue of a power of attorney duly executed *by the said* for the purposes therein mentioned.

And I further certify that the persons who made the said acknowledgment are personally known to me to be the persons described in and who executed the said deed. ..

Given under my hand and official Seal the fourth day of January in the year of our Lord one thousand eight hundred and fifty three.

[L.S.] JOSEPH C. LAURENCE
Commissioner of the State of California in and for the State of New York, 68 Water Street, New York.

State of Maryland
Baltimore City & County—ss.

On this fifth day of January A. D. 1853 before me, Jabez D. Pratt, a Commissioner appointed by the State of California in and for the State of Maryland to take the proof and acknowledgment of deeds &c personally appeared Mary S. McArthur, one of the grantors to the within deed of conveyance and personally known to me and having signed & sealed the same before me acknowledged the same to be her free act and deed and desires the same might be recorded as such.

In Witness Whereof I have hereunto set my hand and affixed my official seal on the day & year last aforesaid.

JABEZ D. PRATT
Comr. of California.

State of California,
County of Solano.

The foregoing instrument of writing was received by me for record on the 18th day of April A. D. 1853 at 9 o'clock A. M.

JOS. P. VAUGHN
County Recorder

State of California,
County of Solano—ss.

I certify the foregoing to be a true copy of an instrument of writing of Record in my office in

Book H, pages 10, 11, 12 & 13 of Solano County Records.

Witness my hand and seal of the County Recorder's office of said County this the 9th day of April A. D. 1857.

[Seal] WILLIAM L. HOOTON
County Recorder of said County
By PERRY WILLIAMS
Dep. Recorder

REPORT OF G. *D.* BATES, LATE U. S. DISTRICT ATTORNEY, ON THE TITLE TO MARE ISLAND

Copy

U. S. District Attorneys Office
San Francisco, July 30, 1852

I George C. Bates late United States district atty for the district of Michigan and at present in the Office of Calhoum Benham, United States District Atty for the Northern District of California do hereby certify that I have carefully examined the title of George W. P. Bissel to Mare Island in California and that I find that the title to said Island is in said George W. P. Bissel free and clear except the one sixteenth which belongs to the estate of William P. McArthur as appears by the copies of the several conveyances herewith forwarded and I do further certify that said title (illegible) clear from all incumbrances or liens and that the same is vested in said George W. P. Bissel and the one

sixteenth in William P. McArthur and that I have made this examination because the district attorney was engaged in court and that it was done at the request of Commodore Sloat on behalf of the Commission to locate a Naval Depot.

(signed) GEO. C. BATES

Late U. S. District atty now in the office of Calhoun Benham U. S. District Atty for Northern district of California

I further state that in an informal and unofficial manner I have conversed with Gen'l James Wilson who states that according to the principles settled by the board of Land Commissioners that the Grant to De Castro is valid and clear.

(signed) GEO. C. BATES

United States Circuit Court of Appeals
for the Ninth Circuit

No. 7522

JAMES E. O'DONNELL, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO COPY OF PLAINTIFF'S EXHIBIT "C".

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify that the foregoing one hundred and fifty-four pages, numbered from and including 1 to and including 154, to be a full, true and correct photographic copy of the record in the District Court of the United States for the Northern District of California, in a cause there entitled United States of America, plaintiff, vs. George W. P. Bissel and William H. Aspinwall, and there numbered 311, N.D., as the originals thereof, heretofore certified to my office as Plaintiff's Exhibit "C" in the above-entitled O'Donnell cause, remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the

State of California, this 7th day of June, A. D. 1937.

[Seal] PAUL P. O'BRIEN,
Clerk.

[Endorsed]: U. S. District Court, S. F. U. S. vs. Stewart. No. 2685. U. S. Exhibit D-2. Filed June 8, '37. W. B. Maling, Clerk.

U. S. EXHIBIT D-3

1857
February 28

At a stated Term of the District Court of the United States of America for the Northern District of California held at the City of San Francisco on Saturday February 28th. 1857.

Present,

Hon. Isaac Goodwin District Judge.

The United States — No. 361.
vs. — Decree of Confirmation entered.
Hugo D. Vignes.

Petition filed.

The United States — No. 390.
vs. — Motion for leave to file petition and for process entered.
Edward A. Bradford et als.

The United States — No. 391. Petition and motion for leave to file same and for process entered.
vs.
F. F. Desabmichel et als.

Citizens Bakalia — No. 213.
vs. — Order entered allowing time for testimony to
The United States. — close proofs and submit cause.

Edward A. Bradford et als. — No. 390.
vs. — Motion on affidavit for leave to file petition to the District
The United States. — was made and petition ordered.

The United States — No. 361.
— vs —
Isaac D. Bennett — Decree of Confirmation &c.

Entered &c.

2 The United States of America, District of California, ss.
At a Stated Term of the District Court of the United States of America for the Northern District of California held at the City of San Francisco on Monday March 2d 1857.
Present, the Hon. Ogden Hoffman, District Judge.

Section Title — No. (illegible)
The United States — vs — Sundry lots of land situated fronting on the Bay of San Francisco and known as the Mission Dolores.

The United States — vs — F. F. Tesdemacher et als. — No. (illegible) Petition filed, citation issued and returned duly executed, publication ordered and proof of the same made, and default of all parties interested entered, allowing the claim of the petitioner to be duly filed.

Antonio Sabadia — No. 213.
The United States. — Order entered allowing Petitioner time to Argue, proofs and submit cause.

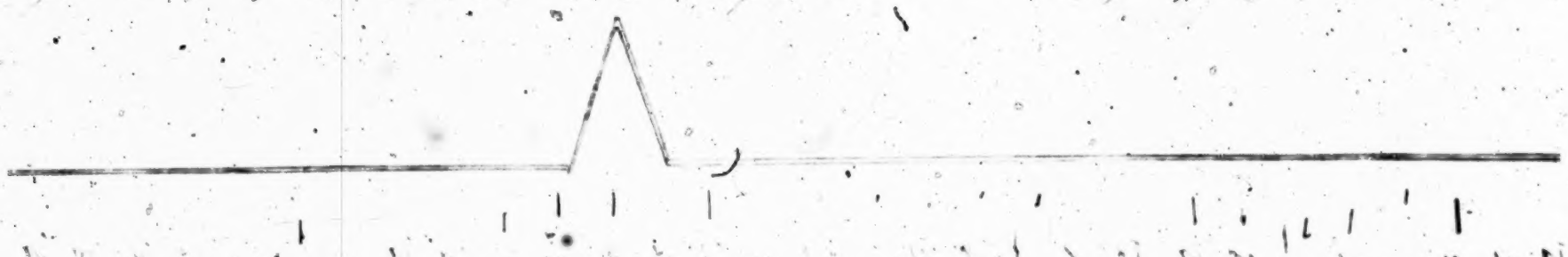
Edward A. Bond. — No. 390.
— do — et als. — Motion on affidavit to dismiss cause & Decree
The United States. — was made, and taken under advisement.

The United States. — No. 424.
— do — — On Motion of the United States District
Jose. D. Limantour. — Attorney. It is ordered by the Court that Sidney Johnston, Esq. be paid by the United States Commissioner the Sum of [illegible] Dollars for Services [illegible] in the case of Limantour, to be paid out of the Contingent Fund of the Commissioners.

24

0857

March 0



Certified Copy

United States of America,
Northern District of California—ss.

I, Walter B. Maling, Clerk of the United States District Court in and for the Northern District of California, do hereby certify that the annexed and foregoing is a true and full photostatic copy of the original pages 23 and 24, Volume No. 3, Minutes U. S. District Court, Northern District of California, for March 2nd, 1857, showing the order entered in case No. 311, N. D. United States vs. Bissell & Aspinwall, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at San Francisco, Calif. this 19th day of April, A. D. 1937.

[Seal] WALTER B. MALING,
Clerk.
By C. W. CALBREATH,
Deputy Clerk.

[Endorsed]: U. S. District Court. S. F. U. S. vs. Stewart. No. 2685. U. S. Exhibit D-3. Filed June 8, '37. W. B. Maling, Clerk.

No. 9507

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

MARY W. STEWART, et al.,

Appellees.

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Thursday, January 16, 1941.

Before: Denman, Mathews and Healy,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal in above cause argued by Mr. Oscar A. Provost, Special Assistant to the Attorney General, counsel for appellant, and by Messrs. J. M. Mannon, Jr., and Robert L. Lipman, counsel for appellees, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday, June 30, 1941.

Before: Denman, Mathews and Healy,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINIONS AND FILING AND RECORDING OF DECREE

By direction of the Court, ordered that the typewritten opinion and concurring opinion and dissenting-in-part opinion this day rendered by this court

in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the opinion and concurring opinion rendered.

[Title of Circuit Court of Appeals.]

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

OPINION

Before: Denman, Mathews and Healy,
Circuit Judges.

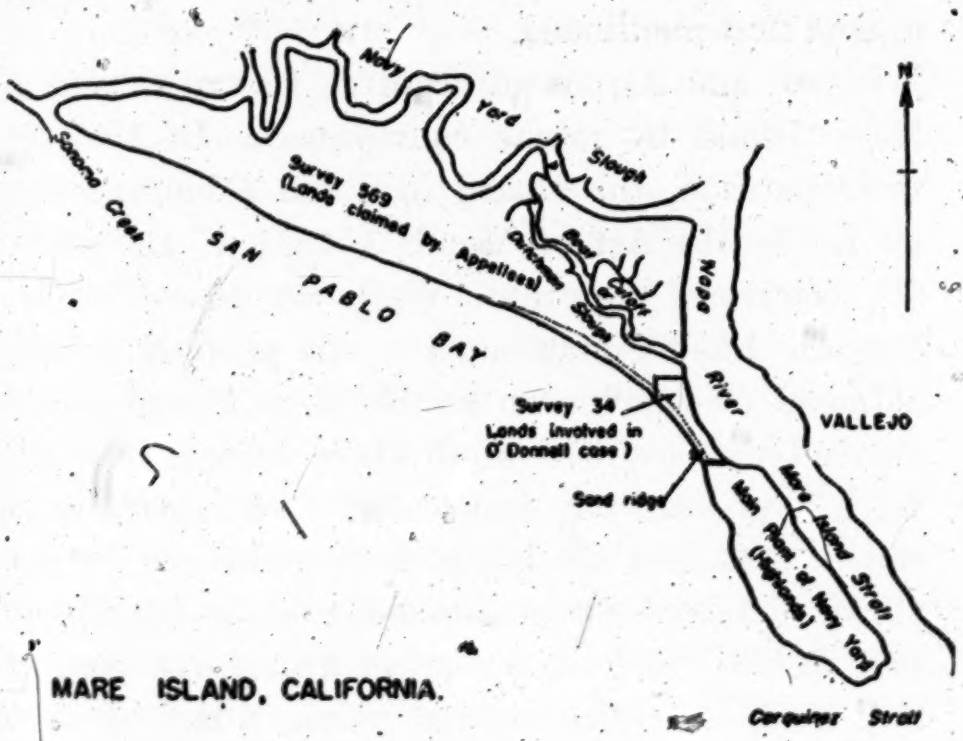
Healy, Circuit Judge:

In this action the United States seeks to quiet its title to a large area of tule or marsh land claimed to be a part of Mare Island in San Pablo Bay and to have been acquired by purchase from the grantees of Victor Castro, to whom the island was granted by the Mexican Governor Alvarado in 1841. Appellees, defendants below, claim title to the land by mesne conveyances from a patentee of the State of California.

The suit—a companion case to United States v. O'Donnell, 303 U. S. 501—presents the final chapter in a century-old controversy concerning the extent and validity of the Castro grant. The O'Donnell case set at rest doubts of the validity of the grant and of the decree confirming it. That deci-

sion, however, involved a different tract and left open to inquiry a number of questions now presented.

Mare Island lies close to the mainland from which it is separated by navigable waters. For the purpose of illustration we append a drawing of the area.



MARE ISLAND, CALIFORNIA.

At the southeasterly extremity, between Mare Island and Carquinez Straits on the east and south and San Pablo Bay on the west, is an area of high land approximately 900 acres in extent upon which the plant of Mare Island Navy Yard is in the main located. Extending northwesterly from this upland there was, at the time of the grant, a narrow neck of swamp land which has since been widened somewhat by filling and reclamation. This isthmus,

known as Survey No. 34, was the tract involved in the O'Donnell suit and was there determined to belong to the United States. Northwesterly of Survey No. 34, stretching out fanwise, is the much larger tract of swamp land known as Survey No. 569—the lands in suit. Appellees contend that Mare Island comprises only the relatively small area of upland first mentioned.

Bissell and Aspinwall acquired Castro's grant of Mare Island by mesne conveyances. In 1855, on their petition, the Board of Land Commissioners set up by the Act of March 3, 1851, c. 41, 9 Stat. 631, confirmed the grant. While the proceeding before the Land Commissioners was pending, a body of naval officers known as the Sloat Board recommended the acquisition of Mare Island as a site for a navy yard and depot. The Sloat Board in its report described the island as bounded on the east by Mare Island Straits, on the west by the Bay of San Pablo, "and on the north by a large tract of tule land, extending several miles in the direction of the valley of Sonoma." The owners in their negotiations with the naval board stated that the island contained about 900 acres of high or dry land and about 1300 acres of tule or low ground.

In December, 1852 the Secretary of the Navy made to the owners an offer to purchase "that tract of land known as Mare Island in California including all the tide or low land and marsh belonging to the same or . . . reputed or claimed to belong to the same . . . as recently surveyed and re-

ported by a Board of Officers sent to California for the purpose of selecting a site for a Navy Yard. . . .'' Accepting the offer, Bissell and his associates on Jan. 4, 1853 gave their deed of the island, and later executed a bond indemnifying the United States against possible failure of their title. The deed described the island substantially in the terms of the offer to purchase. On February 11, 1853, by executive order of the President, Mare Island was reserved ''together with all its appendages of Tule or Marsh land ordinarily reputed to belong to said island . . .'' for public uses. In 1854 the state of California formally consented to the purchase, and also relinquished its title and interest to ''the overflowed beach, or swamp lands'', on the eastern shore from the southern end to a parallel intersecting the northern point of the highlands ''and extending into the waters or straits, washing the eastern shore of said highlands to ship channel''. By the same act the state ceded jurisdiction to the United States over both the highland and the overflowed portions of the eastern shore thereof. Cal. Stats., 1854, 1855, pp. 48-49.

In 1856 the lands in the neck (Survey No. 34) were surveyed by a deputy county surveyor as swamp and overflowed lands supposedly owned by the state under the Swamp Land Act of September 28, 1850, c. 84, 9 Stats. 519. The state thereafter issued its patent to Darlington. In 1869, at the request of one Hinckley, the lands in suit were sur-

veyed as Survey No. 569 by the county surveyor of Solano county. In 1874 the state issued its patent for the latter tract to one Pearson, assignee of Hinckley.[1] In 1883 Pearson's successors brought an action in ejectment against the Commandant of the navy yard to obtain possession of the lands in Survey No. 569. In that suit the Commandant was represented by the United States attorney and a special assistant appointed by the Attorney General. The United States was not a party. The evidence then produced showed that the lands were below the line of ordinary high tide, and Justice Field, sitting in circuit with Judge Sawyer, accordingly held that they were not included within the Castro grant. Judgment in ejectment was entered against the Commandant. San Francisco Sav. Union v. Irwin, 28 Fed. 708. The judgment was affirmed. 136 U. S. 578 (1890).

In 1896 one Cross went into possession of the lands embraced in Survey No. 569 and asked the then Commandant for permission to employ a navy yard surveyor to locate the boundary, stating that he, Cross, was about to begin the reclamation of his land. The Commandant agreed, expressing the wish "that the boundary line once established may be done so accurately that no objection will ever be raised by either of the parties interested therein." In the years 1896, 1910 and 1924 the Department of the Interior issued patents on behalf of the

[1]Appellees claim under Pearson.

United States to the state of California covering all the lands embraced in Survey No. 569, as swamp lands.[2] In 1913, in compliance with a state statute (Cal. Stats., 1897, pp. 51-52), a map of Mare Island Naval Reservation was filed with the recorder of Solano county designating only the high area and the portion embraced in Survey No. 34. In December, 1914 the navy yard officials erected a fence along the southeasterly boundary of the lands in suit.

In the period following 1896 the private claimants constructed levees to reclaim the lands "for general agricultural purposes, stock raising." Cross lived on the lands with his family and workmen from 1898 to 1907. In recent years portions of the area in suit have been improved for use by gun clubs. A public utility company erected power lines under an easement obtained from Cross in 1911. In the later twenties a toll road was constructed under a franchise from Solano county, and a local mosquito abatement district, the boundaries of which are identical with those of Solano county, has undertaken to destroy mosquito larvae on the marsh area. The lands have been assessed and taxed for state purposes annually since 1882, and there is evidence that since 1890 a number of civil cases have been

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[2] In 1928 Secretary of the Interior Work was compelled by mandamus to certify the land in Survey No. 34 for patent to the state as swamp lands. Work v. United States ex rel. O'Donnell, 23 Fed. (2nd) 136.

prosecuted in the state courts pertaining to them.

The present suit was begun by the United States in 1930. It resulted in a judgment for the defendants.

1. The grant to Castro was of the island named "La Yegua" (Mare Island) "in all its extent." In their petition to the Board of Land Commissioners the claimants represented the tract to be "an island and its boundaries easily defined." The decree of confirmation states: "The place of which confirmation is hereby given is situate in the bay of San Francisco, and is called 'Isla de la Yegua' or Mare Island and being an Island is bounded by the water's edge." It is the contention of the government that this decree conclusively establishes a valid title in the United States to all of the lands on the island above the line of ordinary high tide.

We are unable to see how the government's position can be successfully assailed. Mare Island lies in tidal waters. The phrase "water's edge", as here used, is synonymous with the shore and would seem clearly to call for a boundary at the line of mean high tide. "By the common law, the shore of the sea, and, of course, of arms of the sea, is the land between ordinary high and low water mark, the land over which the daily tides ebb and flow. When, therefore, the sea or a bay is named as a boundary, the line of ordinary high water mark is always intended where the common law prevails." United States v. Pacheco, 2 Wall. 587. And see Borax,

Ltd. v. Los Angeles, 296 U. S. 10, 22-25; Shively v. Bowlby, 152 U. S. 1, 29.[3]

It is undisputed that the marsh lands extending northwesterly from the uplands were all above mean high tide at the time of the grant and its later confirmation. On this point appellees concede that there was no natural channel or water course extending across the neck from the inner channel to San Pablo Bay. Numerous early charts and surveys in evidence, as elucidated by the testimony of expert witnesses, show conclusively that from the southerly tip of the island to the northwesterly extremity of the marsh land there has always been on either hand a well defined shore line unbroken by mean high tide.

But appellees insist that since the grant was made under the Mexican law, that law must be looked to to determine what was granted; and that under the Mexican law, the boundary between the sea shore, which was public, and the upland, which passed under private grant, was not the line of ordinary or mean high tide but the line reached by the highest tide during the year. They claim that

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[3]In California the rule is to the same effect. Teschemacher v. Thompson, 18 Cal. 11 (1861); Ward v. Mulford, 32 Cal. 365 (1867); More v. Massini, 37 Cal. 432, 433 (1869); People v. Morrill, 26 Cal. 336, 353-354 (1864); Wright v. Seymour, 69 Cal. 122, 126-127, 10 Pac. 323 (1886); Heckman v. Swett, 99 Cal. 303, 307, 33 Pac. 1099 (1883); Eichelberger v. Mills Land, etc., Co., 9 Cal. App. 628, 639-640, 100 Pac. 117 (1908); Forgeous v. County of Santa Cruz, 24 Cal. App. 193, 194-195, 140 Pac. 1092 (1914).

the neck immediately adjoining the high lands was shown to be below the line of highest high water and therefore the marsh lands in question were not embraced in the grant.

We need not consider the factual argument beyond saying that the record leaves the matter substantially in doubt. The decree is written in English and was rendered by a tribunal which may properly be described as functioning in a common law atmosphere. It is to be presumed in the absence of internal evidence to the contrary—and the decree contains no such evidence—that the terms used were intended to bear the meaning ordinarily attached to them at common law. United States v. Pacheco, supra. As said by Mr. Justice Field in San Francisco Sav. Union v. Irwin, supra: "By the common law—and by that law must decrees written in the English language be interpreted—the boundary of the island is determined by ordinary high-water mark. The shore, which belongs to the public, is the line between that mark and low-water mark, over which the daily tides ebb and flow." And see, Valentine v. Sloss, 103 Cal. 215, 219. Indeed, in the cases involving decrees confirmatory of Mexican grants, where a boundary lay upon the sea or an arm of the sea, the line of ordinary high tide has, so far as we are advised, invariably been held to be the true boundary.[4]

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[4]See further on the general subject: Coburn v. San Mateo County, 75 Fed. 520; Teschemacher v. Thompson, 18 Cal. 11; Ward v. Mulford, 32 Cal. 365; More v. Massini, 37 Cal. 432.

2. Appellees urge that on the early charts and by common repute as of the middle of the last century the name "Mare Island" was applied to the high area only. They say further that the grant to Castro was a grant of a place by name, without specific boundaries; hence it covered only the land shown to have been in possession of the grantee. The application of the latter rule, it is said, excludes all of the lands in suit.

The showing before the Board on the matter of Castro's possession was that he placed a considerable number of horses and mares—seventy or eighty head—on the island under the care of Indian employees, and that he built a hut and corral on the upland. There is no evidence that the animals confined their grazing to the high lands, and it does not appear that they were close herded there or were excluded from the marshy land by any natural or artificial barrier. Presumably they grazed at will over the whole area, as it is commonly known that livestock find good grazing on the salt grass of marsh lands of this type after the passing of the spring season.

But whatever may be the fact, there is no occasion to inquire into the extent of Castro's occupancy, or into the matter of early repute. Specific boundaries are given in the decree. It describes the area to which title is confirmed as an island bounded by the water's edge. It is now too late to argue that the grant to Castro was not of the whole island but of a limited portion of it only. Where a decree

specifies the boundaries of the tract to which title is confirmed it is conclusive, not only on the question of title, but also as to the boundaries which it specifies." United States v. Hancock, 133 U. S. 193, 196. And the decree is none the less conclusive because it may be thought that in the circumstances the Land Commissioners might well have given the grant a narrower construction than they did. United States v. Coronado Beach Co., 255 U. S. 472, 487-488. The law on the subject is too well settled to warrant multiplication of authorities. On the classification of grants, see San Francisco v. Le Roy, 138 U. S. 656; Higueras v. United States, 5 Wall. 827.

3. The Freeman Survey. Pursuant to the act of July 1, 1864, c. 194, §1, 13 Stat. 332,[5] the United

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[5]The statute, after providing for publication of notice of the survey, states that if no objections are made to it the surveyor-general "shall approve the same, and transmit a copy of the survey and plat thereof to the commissioner of the general land-office at Washington, for his examination and approval; but if objections are made to said survey within the said ninety days, by any party claiming to have an interest in the tract embraced by the survey, or in any part thereof, such objections shall be reduced to writing, stating distinctly the interest of the objector, and signed by him or his attorney, and filed with the surveyor-general, together with such affidavits or other proofs as he may produce in support of the objections. At the expiration of said ninety days the surveyor-general shall transmit to the commissioner of the general land-office at Washington a copy of the survey and plat, and objections, and proofs filed with him in support of

States surveyor-general for California, Rollins, in 1877 instructed Freeman, a deputy surveyor, to survey Mare Island in conformity with the decree. Having made his survey, Freeman filed with the surveyor-general his plat and notes and a general description of Mare Island, purportedly delineating the boundaries of the island at "the water's edge at ordinary high-water mark". By this survey the island was found to embrace both the high lands and the whole reach of tule lands here involved, namely, the area bounded by Carquinez Strait and San Pablo Bay on the south and southwest, Navy Yard Slough on the north, and Napa River and Mare Island Strait on the northeast.

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the objections, and also of any proofs produced by the claimant and filed with him in support of the survey, together with his opinion thereon; and if the survey and plat are approved by the said commissioner he shall indorse thereon a certificate of his approval. If disapproved by him, or if, in his opinion, the ends of justice would be subserved thereby, he may require a further report from the surveyor-general of California, touching the matters indicated by him, or proofs to be taken thereon, or may direct a new survey and plat to be made. Whenever the objections are disposed of, or the survey and plat are corrected, or a new survey and plat are made in conformity with his directions, he shall indorse upon the survey and plat adopted his certificate of approval. After the survey and plat have been, as hereinbefore provided, approved by the commissioner of the general land-office, it shall be the duty of the said commissioner to cause a patent to issue to the claimant as soon as practicable after such approval."

Rollins published notice of the return of the survey the first publication being October 11, 1877. The survey and plat were retained in his office for the 90-day statutory period allowed for the filing of objections. No objection or protest was lodged during the time limited. On November 5, 1877, Ames, who had succeeded Rollins, transmitted Freeman's tracing and account to the commissioner of the general land office, who promptly authorized payment for Freeman's services. On August 6, 1879, surveyor-general Wagner, who had succeeded Ames, forwarded a copy of the survey and plat to the general land office. In his letter of transmittal Wagner stated that he considered the survey incorrect. As thus returned the survey was filed without any action being taken thereon by the commissioner.

It is the position of the government that the boundaries as fixed by this survey foreclose any further question as to the extent of Mare Island. It is contended that the 1864 Act does not require the formal endorsement on the plat of the commissioner's approval where no exception has been taken to the survey within the statutory time; and that the record shows that Freeman's work has long been accepted by the land department as the official survey of the island.

We are not able to agree. We think the statute requires a formal certification of the commissioner's action if in fact the survey meets with his approval. There was no such certification. Indeed, there is no satisfactory evidence that the plat was ever accepted

by the department as correct. While the survey has perhaps some evidentiary value it is not conclusive.

Freeman included as part of Mare Island the lands lying northeasterly of Boat Cutoff or Dutchman's Slough; but charts accepted by all parties as accurate show conclusively that the bed of the continuous water course known as Boat Cutoff has always been well below the line of mean high tide. Accordingly the land lying beyond it cannot be taken as a part of Mare Island. It is a separate island.

4. The trial court found that appellees and their predecessors have for fifty years possessed the land adversely under claim of right and color of title. Appellees concede, though, as they must, that the statute of limitations does not run against the sovereign and that title by prescription cannot be acquired to property of the United States.

5. The Act of March 3, 1891, 26 Stat. 1095, 1099, provides that "suits by the United States to vacate and annul any patent . . . shall only be brought within six years after the date of the issuance of such patents." It was held below that the suit is barred by this statute in so far as cancellation is sought of the swamp land patents issued by the Department of the Interior in 1896 and 1910.

We think otherwise. It is settled that the 1891 act has reference only to patents issued for lands open to disposition through the general land office. It is "strictly a part of the public land laws." United States v. Minnesota, 270 U. S. 181, 196, and

cases there cited. In United States v. O'Donnell, supra, the court pointed out that the Swamp Lands Act effected the transfer of an interest in the land granted "only so far as they were part of the public domain" at the time of the grant, and that the act "could not include lands which the Government had not acquired." It is clear that the department was wholly without authority to dispose of the lands in suit in the absence of legislation authorizing their sale. Smelting Co. v. Kemp, 104 U. S. 636, 641, 646. And see Northern Pacific Ry. Co. v. United States, 227 U. S. 355, 367. Since the patents are mere nullities, United States v. Conway, 175 U. S. 60, 68, they present no impediment to the assertion of the government's title. The case of United States v. Chandler-Dunbar Co., 209 U. S. 447 is readily distinguishable.

6. Appellees say that for a long period of time both the United States and the state of California recognized and agreed upon the southeasterly boundary of swamp land survey No. 569 as the boundary beyond which Mare Island navy yard did not extend. They claim that by the course of events what amounts to a public boundary has been established at that line between the state and federal sovereignties, the latter having jurisdiction over the naval reservation and the former exercising jurisdiction over the territory outside the reservation. Authorities are invoked holding that where a public boundary line has long been acquiesced in, that line is conclusively taken to be the correct one even if as

an original matter it could be shown that the line should have been located elsewhere.[a]

The argument is too far-fetched to warrant extended comment. It appears to be an assertion in another guise of the claim of prescriptive title. We do not have here a suit between sovereign states concerning a political boundary. The issue involved is the title to real property claimed to have been acquired by the United States by private purchase. Under the constitution Congress alone has power to dispose of property of the United States. The fact that the state of California has exercised over the land the powers of a sovereign has no perceivable bearing on the question of ownership. It proves no more than that the state and county authorities indulged the mistaken assumption that the private claimants owned the land. Moreover, there never was as between the state and the United States a mutual agreement, express or implied, that the boundary of the navy yard lay at the line where the navy yard people erected the fence in 1914. Down to the time of the decision in the O'Donnell case the grantees of the state were continuing to assert that the true boundary lay elsewhere, and extended litigation has been required to dispel the uncertainties overhanging the whole matter.

7. Finally, it is urged in support of the judg-

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[a] The principal cases cited are Oklahoma v. Texas, 272 U. S. 21, 47; Michigan v. Wisconsin, 270 U. S. 295; Indiana v. Kentucky, 136 U. S. 479; New Mexico v. Colorado, 267 U. S. 30.

ment that the suit by the United States is lacking in equity. This asserted defense, which, incidentally, the trial court declined to pass upon, appears to be indistinguishable from laches or equitable estoppel although those names are not applied to it. The argument is that the United States should not at this late date be allowed to prevail in view of the long-continued acquiescence of its officials in the decision in San Francisco Sav. Union v. Irwin, supra, and the later issuance to the state of the swamp land patents. In reliance on this course of conduct, it is said, appellees and their predecessors were induced to extend large sums in the reclamation and improvement of the lands.

It appears from the record that officials of the government felt that the land had been lost to the United States as the result of the decision in the Irwin case, although, as more exhaustive investigations have disclosed, the true facts were not before the court in that action. It is to be observed that the facts respecting the tidal conditions obtaining on the island were at least within the possibility of knowledge on the part of claimants willing to take note of those conditions or desirous of investigating the available evidence. Certainly, the law applicable to those conditions was announced clearly enough in the Irwin decision.

Mare Island had been acquired and was held by the United States in its sovereign capacity as part of a program of national defense. Those claiming adversely to the government knew that Congress

had never relinquished title to any part of the swamp lands in dispute, if in fact these were a part of the area acquired; and they were chargeable with knowledge that the sole power to dispose of property of the United States resides in Congress. Absent an adjudication of the extent of the government's title, in a suit to which the United States was a party, it could not safely be assumed by any claimant that the swamp land patents issued to the state were to be taken for more than they might ultimately prove to be worth. Smelting Co. v. Kemp, supra. Compare United States v. Walker River Irr. Dist., 104 Fed. (2d) 334. From the beginning the rights of those claiming under the state have been shrouded in doubt and uncertainty.

It is settled beyond debate that in suits brought by the government for the protection of public rights, unauthorized conduct on the part of its officers, or arrangements or agreements by them not having the sanction of law, do not constitute a defense or give rise to an estoppel. Utah Power & Light Co. v. United States, 243 U. S. 389; Lee Wilson & Co. v. United States, 245 U. S. 24; Jeems Bayou Club v. United States, 260 U. S. 561; Cramer v. United States, 261 U. S. 219, 234. The chief criticism to which responsible public officials may be subject here is the delay in seeking an authoritative determination of this long standing controversy. But, on considerations having their roots in necessary public policy, laches on the part of its officers is not imputable to the government. United States

v. Beebe, 127 U. S. 338; United States v. Kirkpatrick, 9 Wheat. 720. If we assume the existence of the equities contended for, it is nevertheless "manifest that the prayer for their enforcement is in the nature of things beyond the sphere of judicial authority however much relief on the subject may be appropriately sought from the legislative department of the government", Lee Wilson & Co. v. United States, supra.

In respect of the lands lying northeasterly of Boat Cutoff or Dutchman's Slough the decree below is affirmed. Otherwise it is reversed.

Denman, Circuit Judge, concurring:

This is a concurrence in all of Judge Healy's opinion, despite the grossly inequitable result arising from the Government's reliance on its freedom from the defense of laches. It is peculiarly a case for Congressional remedial action, beyond the equitable powers of this court.

If we were to accept Judge Mathews' view that the district court has made a finding, in effect, that the "place" which at the time of the grant to Castro and at the time of the confirmation to Bissell and Aspinwall was called Isla de la Yegua or Mare Island did not include any land here in controversy, such a finding cannot be sustained in this court because of the admission of appellees' brief here that:

"To avoid any misunderstanding of our position, we do not claim that there was any natural channel or water course extending across the neck from the Mare Island Straits side to the San Pablo Bay side, although some of the maps would tend to show such a break. We think that the evidence, particularly the Coast survey charts and surveys, indicates rather clearly that the marsh area in the neck was above *mean* or *ordinary* high tide, which Lieutenant Smith repeatedly testified was the shore line indicated upon the charts." [Italics by the court.]

The charts referred to in this admission were made in 1850, prior to the great "slickens" deposits of the hydraulic mining of the later years of the 1850 decade.

Nor can I accept certain dictionary definitions to the effect that the word "island" does not always mean land completely surrounded by water against the applicable holding of Justice Fields' opinion in United States v. Pacheco, 2 Wall. 587, and other cases cited in Judge Healy's opinion.

Mathews, Circuit Judge (dissenting in part):

Appellant, the United States, acquired its title, if any, to the land in controversy from Bissell and Aspinwall, who acquired their title, if any, by mesne conveyances from Victor Castro, who ac-

quired his title, if any, by grant from the Mexican government. Bissell and Aspinwall could and did convey to appellant only the land which was granted to Castro and confirmed to Bissell and Aspinwall. The land so granted and confirmed was in the decree of confirmation (May 8, 1855) described as—

> "The place [which] is situate in the Bay of San Francisco, and is called 'Isla de la Yegua' or Mare Island, and being an Island is bounded by the water's edge."

In the case at bar, the District Court found, in effect, that the "place" which at the time of the grant to Castro and at the time of the confirmation to Bissell and Aspinwall was called Isla de la Yegua or Mare Island did not include any of the land here in controversy. The finding is amply supported by evidence.

The last part of the above quoted description should be read with and construed in the light of the first part; and it should be remembered that the word "island" does not always mean land completely surrounded by water. International Dictionary, "Island," definition 2; Century Dictionary, "Island," definitions 2 and 3. "The words 'island' and 'isle' are sometimes used for a piece of land isolated during high tide or surrounded by marsh; e. g., Hayling Island, Ile of Ely." Encyclopaedia Britannica, 14th Edition, Vol. 12, p. 715.

Even now, at highest high tide, the land in controversy is completely separated by water from the land which in 1855 was called Isla de la Yegua or

Mare Island. Considering the huge quantities of silt which the evidence shows—and we know judicially—have been deposited in San Francisco Bay since 1855, it is not improbable that in 1855 the two tracts were completely separated by water at ordinary high tide. Be that as it may, appellant acquired only the land which in 1855 was called Isla de la Yegua or Mare Island; and the land in controversy was not then so called.

The judgment should be affirmed.

[Endorsed]: Opinions. Filed Jun 30, 1941. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
For the Ninth Circuit

No. 9507.

UNITED STATES OF AMERICA,

Appellant,

vs.

MARY W. STEWART, et al.,

Appellees.

DECREE

Appeal from the District Court of the United States for the Northern District of California, Southern Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of

the United States for the Northern District of California, Southern Division and was duly submitted.

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause, and hereby is, affirmed in respect of the lands lying northeasterly of Boat Cutoff or Dutchman's Slough, and otherwise the said decree be, and hereby is reversed.

[Endorsed]: Filed and entered June 30, 1941. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Thursday, October 16, 1941.

Before: Denman, Mathews and Healy, Circuit Judges.

[Title of Cause.]

ORDER DENYING PETITION FOR REHEARING

Upon consideration thereof, and by direction of Circuit Judges William Denman and William Healy, It Is Ordered that the petition of appellees, filed July 28, 1941, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

[Title of Circuit Court of Appeals and Cause.]

ORDER STAYING ISSUANCE OF MANDATE

Upon application of Messrs. McCutchen, Olney, Mannon & Greene, counsel for the appellees Stewart et al., and good cause therefor appearing, It Is Ordered that the issuance, under Rule 28, of the mandate of this Court in the above cause be, and hereby is stayed to and including January 16, 1942; and in the event the petition for a writ of certiorari to be made by the appellees herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

WILLIAM DENMAN
United States Circuit Judge

Dated: San Francisco, California
October 17, 1941

[Endorsed]: Filed Oct. 18, 1941. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

PRAECIPE

To the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit:

Appellees, Mary W. Stewart, Sears Point Toll-Road Co., American Trust Company, Bay Land Company, Field and Tule Land Company, West End Land Company and James Irvine, request that

you prepare a transcript of record to be filed with the Supreme Court of the United States on petition of Appellees for a writ of certiorari in the above entitled cause, said transcript of record to include the following:

1. The entire record upon which the above entitled cause was heard by the United States Circuit Court of Appeals for the Ninth Circuit, and that you include in the printing all of Exhibits D-1, D-2 and D-3.

2. The proceedings had in the United States Circuit Court of Appeals for the Ninth Circuit, including

(a) Order of Submission,

(b) Order Directing Filing of Opinions and Filing and Recording of Judgment,

(c) Opinions,

(d) Judgment,

(e) Order Denying Petition for Rehearing,

(f) Order Staying Issuance of Mandate.

3. This Praecipe and service thereon.

It is further requested that you transmit to the Supreme Court of the United States with the certified transcript of record all of the original exhibits on file.

Dated: October 23, 1941.

J. M. MANNON, JR.
A. CRAWFORD GREENE
ROBERT L. LIPMAN
Attorneys for defendants and appellees Mary W. Stewart, Sears Point Toll-Road Co., American Trust Company, Bay Land Company, Field and Tule Land Company, and West End Land Company.

W. H. SPAULING
THOMAS E. PALMER
Attorneys for defendant and appellee James Irvine.

Service of the within Praecipe and receipt of a copy thereof is admitted this 23rd day of October, 1941.

NORMAN M. LITTELL
Assistant Attorney General.
FRANK J. HENNESSY
United States Attorney.
ESTHER B. PHILLIPS
Assistant United States Attorney.
OSCAR A. PROVOST
Special Assistant to the Attorney General.
By FRANK J. HENNESSY.
ESTHER B. PHILLIPS.
Attorneys for appellant.

[Endorsed]: Filed Oct. 24, 1941. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

[Title of Cause and Number.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing five volumes, numbered Volumes I, II, III, IV and V, containing the following pages: Volume I, pages 1-354, pleadings; Volume II, pages 355-722, testimony; Volume III Book of Exhibits, pages 1-321, printed exhibits; Volume IV, Book of Exhibits, pages 1 to 54, maps; and Volume V, Exhibits and Proceedings in Circuit Court of Appeals, pages 1 to 173, to be a full, true and correct copy of the entire record together with original exhibits transmitted herewith of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the Appellees, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this ..... day of November, 1941.

[Seal] PAUL P. O'BRIEN,
Clerk

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 16, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.